

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 8

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC HEARING ON
adoption of New Rules I through VII	)	PROPOSED ADOPTION,
pertaining to mortgage servicers, the	)	AMENDMENT, AND REPEAL
amendment of ARM 2.59.1701,)	
2.59.1703, 2.59.1706, 2.59.1707,)	
2.59.1709, 2.59.1725, 2.59.1727,)	
2.59.1728, 2.59.1730, 2.59.1731, and)	
the repeal of ARM 2.59.1721,)	
2.59.1722, 2.59.1723, 2.59.1732, and)	
2.59.1736)	

TO: All Concerned Persons

1. On May 17, 2012, a public hearing will be held in Room 342 of the Park Avenue Building, 301 South Park, Helena, Montana at 10 a.m. to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on May 10, 2012, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

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

NEW RULE I REPORTING FORMS FOR MORTGAGE SERVICERS (1) An applicant for a mortgage servicer license in Montana shall provide a report to the department of the Montana residential mortgage loans serviced within the previous 12-month period prior to the submission of its mortgage servicer application. The report must contain the information in (3). The report must be submitted to the department on the mortgage servicer reporting form, MT-5 Servicer Reporting Form, which is adopted by reference. The form may be downloaded from the Nationwide Mortgage Licensing System web site <http://mortgage.nationwidelicingsystem.org/slr/StateForms/MT5-Servicer%20Reporting%20Form.pdf>.

(2) A mortgage servicer licensee shall compile and submit a report to the department 45 days after the end of each quarter containing the information in (3) for the preceding quarter. The quarter end dates are March 31, June 30, September 30, and December 31. The Quarterly Statement for Mortgage Servicing Activity, which is adopted by reference, is available on the department's web site at www.banking.mt.gov.

- (3) The mortgage servicer report must contain the following information:
- (a) the number of Montana mortgage loans the servicer is servicing;
 - (b) the type of loans (such as Federal Housing Administration guaranteed or private label) and characteristics of the loans in this state (fixed, variable, home equity lines of credit [HELOCs], reverse mortgages, high-cost loans, higher-priced loans, option-adjustable-rate mortgages [ARMs], and negative-amortization loans);
 - (c) the number of mortgage loans the servicer is servicing that are in payment default and a breakdown of these mortgage loans by length of payment delinquency, including 30-day, 60-day, 90-day, and longer delinquencies;
 - (d) for each loan in (3)(c), the unique identifier of the mortgage loan originator and the broker who originated the loan;
 - (e) information on loss-mitigation activities undertaken including, but not limited to, the following:
 - (i) the number of workout arrangements entered into by the servicer in connection with mortgage loans;
 - (ii) a description of the types of workout arrangements, including mortgage loan modifications, and the percentage of each type of workout arrangement entered into;
 - (iii) the ratio of loan modifications requested by the borrower to the actual number granted by the mortgage servicer; and
 - (iv) the proactive steps taken by the mortgage servicer to identify borrowers at a heightened risk of default, such as those with impending interest rate resets, including, but not limited to, contacts with borrowers to assess their ability to repay their mortgage loan obligations; and
 - (f) the number of foreclosure actions commenced in this state in connection with mortgage loans the mortgage servicer is servicing and where the loan is in the foreclosure process.

AUTH: 32-9-130, MCA

IMP: 32-9-170, MCA

STATEMENT OF REASONABLE NECESSITY: House Bill 90 (HB 90) was passed by the 2011 Legislature and signed by the Governor on May 5, 2011. HB 90 provides that the department must license and regulate mortgage loan servicers through the Nationwide Mortgage Licensing System (NMLS). As part of the licensing process, HB 90 enacted 32-9-170, MCA, which requires mortgage loan servicers to file with the department, upon request, a report detailing the mortgage servicer's activities in this state in a form and format acceptable to the department. This new rule sets forth the substance of the report and the timing requirements of when the report should be submitted.

Applicants for a mortgage servicer license must submit the report as part of the application process. The report for new applicants should cover the previous 12-month period prior to the submission of the mortgage servicer application. This will give the department an approximate annual servicing volume. This information is used by the department for the timing and frequency of examinations. Obviously, a mortgage servicer that services a large percentage of Montana loans should be

examined sooner and more frequently than a mortgage servicer that services only a few Montana loans.

On an ongoing basis, all other entities in the mortgage loan origination process must submit quarterly call reports to the NMLS on their mortgage-related activities. For purposes of consistency with the NMLS and because many servicers are also lenders who must file call reports through the NMLS, the department believes mortgage servicers should do the same. In addition, in the case of mortgage servicers, the department needs timely information on Montana loans that are in default and where in the process they are. Annual or even semiannual reports are simply not timely enough to allow the department to keep current on mortgage loan conditions in the state.

The report is due 45 days after the end of the quarter because the NMLS call report is due at the same time. This allows entities sufficient time after the quarter ends to collect and report the data for the prior quarter. It is also consistent with the timing of the mortgage call reports on NMLS. The department has developed a Quarterly Statement for Mortgage Servicing Activity, which is on the department's web site at www.banking.mt.gov.

This rule repeats the language of 32-9-170(5), MCA; however, it is necessary to repeat the statutory language in order to flesh out what information and data the department is requesting. Section 32-9-170, MCA, provides that the servicer must file a report with this information: (a) the number of mortgage loans the mortgage servicer is servicing; (b) the type and characteristics of the loans in this state; (c) the number of serviced loans in default, along with the breakdown of 30-day, 60-day, and 90-day delinquencies; (d) information on loss mitigation activities, including details on workout arrangements undertaken; and (e) information on foreclosures in this state. In order to draft the rule, it was necessary to repeat "the types of loans" in (3)(b) in order to define what the department believes "types of loans" means. In this case, the department believes that "types of loan" means the guarantor or entity making the loan as opposed to the characteristics of the loans, which is its terms and conditions. And in (3)(c) it was necessary to repeat the number of serviced loans in default in order to specify that the specific default that the department is concerned with is payment default.

One additional set of information is being added by this rule to the statutory requirements: the unique identifier of the loan originator and broker that originated loans in default. This is found in (3)(d). The unique identifier of the loan originator and broker that originated the loans in default will enable the department to track the history of loans made by an individual and a company in order to determine whether there are problems that need to be addressed through an examination and/or an enforcement action. Without this information, the department would have no way to track the individuals and entities involved in making a series of loans to individuals who later went into default. Since one of the purposes of the Secure and Fair Enforcement Mortgage Licensing Act of 2008 (SAFE Act) is consumer protection, the department must know the identities of the individuals and entities involved in making loans that borrowers cannot afford to repay. If the department sees a pattern of loans being made by an individual or entity to persons who cannot afford the loan, the department would likely conduct an examination in order to determine

whether inappropriate activities were taking place which were harming Montana consumers.

The statute allows the department to inquire into loss mitigation activities undertaken in this state. Loss mitigation is an area of particular interest to the department and it requires careful monitoring to determine if the servicer is focusing its efforts on these matters. To some extent, the servicer should be able to identify borrowers at risk who need a workout arrangement, such as borrowers with adjustable rate mortgages that are resetting. But the servicer may not be able to identify those borrowers who may need a workout until the borrower says so. The servicer has no way to identify those borrowers who may lose a job or get divorced.

There are many types of workout arrangements that can be agreed to by a borrower and the note holder. Some are: a principal reduction, rate reduction, short sale, or some combination thereof.

In order to monitor the loss mitigation being done for Montana borrowers, the department has determined that it needs the number of workout arrangements entered into by the servicer in connection with mortgage loans it services. This will give the department the total number of workouts done by each servicer. While these numbers will vary given the types of loans that the servicer is servicing, there should be some rough consistency across types of servicers. For instance, if the department saw a subprime servicer who had an abnormally low number of workout arrangements, the department may well schedule an examination to determine why that was. It may be that the servicer does not have sufficient staff to address the requests for workouts that it is getting or that it is simply not receiving the requests for assistance from the borrower. In any case, it would be something that the department should investigate.

The department is also requesting a description of the types of workout arrangements, including mortgage loan modifications, and the percentage of each type of workout arrangement entered into by the servicer over the period. As stated above, there are several different types of workout arrangements that can be made between a borrower and a note holder. The department is requesting this information because it can be used to determine exactly what types of modifications are being done in Montana, successfully or not.

The department is requesting the ratio of loan modifications requested by the borrower to the actual number granted by the mortgage servicer. This information will be used by the department to identify the servicers who are responding to requests for modification as opposed to those who are not. If the department saw a servicer with an inordinately high number of requests for modification and an inordinately low number of actual modifications, the department would likely conduct an examination in order to try to determine why this situation exists.

Montana law requires that if the borrower is delinquent or is otherwise in default, the servicer must act in good faith to inform the borrower of the facts concerning the loan, and the nature of the delinquency or default. If the borrower replies, the servicer must negotiate with the borrower, subject to the mortgage servicer's duties and obligations under the servicing contract, if any, to attempt a resolution or workout pertaining to the delinquency or default. For the department to determine whether Montana law has been followed, the department must know all the servicer's efforts.

The department is also asking for the proactive steps taken by the mortgage servicer to identify borrowers at a heightened risk of default, such as those with impending interest rate resets, including, but not limited to, contacts with borrowers to assess their ability to repay their mortgage loan obligations. To the extent that servicers can identify borrowers who may be going into default, the servicer should be taking proactive steps to reach out to those borrowers at risk rather than just sending adjustment letters and waiting to see if those borrowers will go into default. To the extent that the servicers can address potential defaults before the fact, it helps everyone, the borrowers, noteholders, and the servicer, to stay out of a default situation.

The other sections of the statute were repeated for completeness of the rule.

NEW RULE II RECORDS TO BE MAINTAINED BY MORTGAGE SERVICERS (1) A mortgage servicer shall create and retain a file for each Montana residential mortgage loan which it services. The file must contain, if applicable:

- (a) the borrower (or borrowers) name(s);
- (b) a copy of the original note and deed of trust or mortgage;
- (c) a copy of any disclosures or notifications provided to the borrower required by state or federal law or rule or regulation;
- (d) a copy of all written requests for information received from the borrower and the mortgage servicer's response to such requests as required by state or federal law;
- (e) a record of all payments received from the borrower containing all information required to be provided to a borrower upon request under 32-9-169(1), MCA;
- (f) a copy of any bankruptcy plan approved in a proceeding filed by the borrower or a co-owner of the property subject to the mortgage;
- (g) a communications log documenting all verbal communication with the borrower or the borrower's representative;
- (h) a record of all efforts by the mortgage servicer to comply with the duties required under 32-9-170(7), MCA, including all information utilized in the mortgage servicer's determination regarding loss-mitigation proposals offered to the borrower;
- (i) a copy of all notices sent to the borrower related to any foreclosure proceeding filed against the encumbered property;
- (j) records regarding the final disposition of the loan including a copy of any collateral-release document, records of servicing transfers, charge-off information, or real estate owned (REO) disposition; and
- (k) copies of all contracts, agreements, and escrow instructions to or with any depository institution, any mortgage lender, mortgage servicer, or mortgage broker, any warehouse lender or other funding facility, any servicer of mortgage loans, and any investor, for a period of not less than five years after expiration of any such contract or agreement.

AUTH: 32-9-130, MCA

IMP: 32-9-121, 32-9-170, MCA

STATEMENT OF REASONABLE NECESSITY: HB 90 requires the department to license, examine, and supervise mortgage servicers that service Montana residential mortgage loans. Section 32-9-121, MCA, requires licensees to maintain books, accounts, records, and copies of residential mortgage loan files and escrow account records that are necessary to enable the department to determine whether the licensee is in compliance with the applicable laws and rules.

To allow the department to conduct an examination, the records listed in this rule must be examined. For instance, the department needs copies of disclosures and notifications required by federal and state law as well as rules and regulations so that the department can ensure the disclosures were done correctly and that the borrowers received all the required disclosures and notifications. A record of all payments received from the borrowers is critical since the main function of the servicer is to collect and correctly apply the payments. The department does an escrow analysis when it conducts an examination to ensure that the proper amounts are being collected from borrowers and properly applied to debts owed and investors' accounts.

The communications log is used to determine what the communications were between the borrower and servicer in order to flag the examiners to look at problem areas in the file. A copy of the note is needed in order to determine the name on the note. The deed of trust is needed in order to determine if it is, in fact, a deed of trust or a mortgage. Those two instruments are treated differently under Montana law, and the foreclosure processes are different as are the remedies available to the lender. Therefore, in order to determine whether the foreclosure was done properly, the department must know whether the instrument foreclosed on was a deed of trust or a mortgage.

Copies of all borrowers' requests for information and the response by the servicer are needed because federal law and regulation establish timelines in which borrowers' requests for information must be responded to by servicers. In order for the department to determine if those timelines have been met, it must have copies of the borrower's request for information and the response by the servicer. Montana law requires that if a borrower is delinquent or is otherwise in default, the servicer must act in good faith to inform the borrower of the facts concerning the loan, and the nature of the delinquency or default. If the borrower replies, the services must negotiate with the borrower, subject to the mortgage servicer's duties and obligations under the servicing contract, if any, to attempt a resolution or workout pertaining to the delinquency or default. For the department to determine whether Montana law has been complied with, the department must know all the servicer's efforts.

The department needs the final disposition of the loan records to determine what happened to the loan; for example, if it was transferred to another servicer, certain notices must be given in specific timeframes according to federal law. If the property was sold in a short sale, there should be charge-off information showing the amount charged off. If the loan was refinanced or paid off, there should be collateral release documents. If the loan was foreclosed on or the borrower signed a quit claim deed in lieu of foreclosure, the records regarding the ultimate sale and disposal of the property should be kept in order to allow the department to determine if all proper processes were followed.

Obviously, copies of the contracts, agreements, and escrow instructions are needed in order to determine whether the contracts, agreements, or instructions were followed appropriately according to their terms. In addition, to facilitate an examination, the department is requiring that Montana records be kept in a separate folder for each Montana residential mortgage loan serviced. This will allow examiners to request that all Montana residential mortgage loan files be pulled, rather than all loans being serviced by the mortgage servicer anywhere in the country. The department believes that keeping separate files will improve the efficiency of the examination process.

Finally, the documents listed above must be retained for purposes of any enforcement action that may be taken by the department.

There are alternative approaches to the above requirements. First, the department could propose not including any requirements, but this approach would abdicate the department's duties under the law by preventing the department from being able to conduct examinations and investigations of its licensees. Second, the department could propose some but not all the requirements. The department, however, believes that all the information is necessary in order for the department to examine and supervise licensees.

NEW RULE III WRITTEN EXEMPTION FORM FOR REQUESTING A LICENSING EXEMPTION (1) The written exemption form for requesting exemptions under 32-9-104(1)(b), MCA, is the Mortgage Uniform 1 Registry (MU1R) version 1, which is filed with the Nationwide Mortgage Licensing System, www.mortgage.nationwidelicensingsystem.org.

(2) The written exemption form for requesting exemptions under 32-9-104(1)(c), MCA, is the Mortgage Uniform 4 Registry (MU4R) version 1, which is filed with the Nationwide Mortgage Licensing System, www.mortgage.nationwidelicensingsystem.org.

(3) These forms are adopted and incorporated by reference in ARM 2.59.1728.

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

STATEMENT OF REASONABLE NECESSITY: Section 32-9-104(2), MCA, requires the department to create a form for requesting an exemption from state licensure. Two categories of exemptions, one for financial institutions and one for individuals employed by financial institutions, are required to be registered through the NMLS. See 32-9-103(30) and 32-9-104(1)(b) and (1)(c), MCA. Rather than duplicate the registration form through NMLS with another exemption form, the department adopts the registration form filed with NMLS as its form for requesting an exemption from licensure under Montana law. The department believes the NMLS form covers all the relevant areas and no purpose would be served by requiring that a separate state form be completed.

To file an MU1R through the NMLS, the financial institution or its subsidiary must be regulated by a federal banking agency under 32-9-103(30), MCA. If the financial institution or its subsidiary has filed a MU1R, and received a unique

identifier assigned by the NMLS, that is sufficient for purposes of state law to meet the exemption in 32-9-014(1)(b), MCA. Likewise, an employee of a financial institution or its subsidiary that has registered by filing an MU4R through the NMLS and been assigned a unique identifier is sufficient for purposes of state law to meet the exemption under 32-9-104(1)(c), MCA.

NEW RULE IV DEADLINE FOR RENEWAL APPLICATIONS

(1) Applications for renewal of licenses may be submitted to the department through the NMLS during the annual renewal period from November 1 to December 31.

(2) The department shall process all completed renewal applications submitted to it in the order received.

(3) The holder of an expired license may not conduct any business in Montana until becoming properly licensed.

AUTH: 32-9-130, MCA

IMP: 32-9-117, MCA

STATEMENT OF REASONABLE NECESSITY: The NMLS sets the renewal period, which runs from November 1 to December 31. All licenses expire by operation of law on December 31. Montana has no ability to change the renewal period set by NMLS.

NMLS could have set a different renewal period but it didn't. NMLS apparently decided that a two-month renewal period was sufficient, i.e., not too long and not too short. Regardless, Montana has no ability to change the renewal period set by NMLS.

The department processes the applications for renewal in the order it receives them. The department could process the renewal applications in inverse order, but that would lead to having to wait until all the applications for renewal were submitted before processing any renewals and would mean that all licenses would expire before any renewal applications could be processed. It would also mean that the last person who filed for renewal could resume business before anyone else could and the first person who filed for renewal would be the last person who could resume business.

The department determined after considerable thought that the easiest way to process applications is in the order in which they are received, provided, however, that the application is not considered "received" until it is complete. It is impossible to process an incomplete application because, by definition, something is missing.

Section 32-9-117(2) provides, "[t]he license of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator is valid for up to a 1-year period and expires on December 31." Therefore, by statute, if a license is not renewed before December 31, it expires. An expired license is no license. No business may be conducted without a valid license. Section 32-9-102, MCA, provides that a person may not act as a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator with respect to any residential mortgage loan located in Montana unless licensed under the Montana Mortgage Act. The department cannot allow an individual or entity to act as an unlicensed

mortgage loan broker, lender, servicer, or loan originator because they once held a license. The statutory language is clear; no one can act as a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator with respect to any residential mortgage loan located in Montana unless licensed under the Montana Mortgage Act.

The department continues to receive inquiries from individuals and entities, believing they have some grace period to renew their licenses after December 31. They do not. All licenses expire on December 31, and if the license is not renewed before that date, the entity or individual must shut down, cease all activity, and not resume business until their license has been renewed. Any person or entity conducting mortgage activity with an expired license is guilty of unlicensed activity and the department will bring an enforcement action against them.

That an individual or entity has applied for renewal does not mean that the license has been renewed. The application for renewal must then be processed by the department (in the order in which it was received as stated above) before it can be determined if the individual or entity meets all the qualifications for renewal. The license is not renewed until it has been renewed on NMLS. Any license not renewed on the NMLS before December 31 expires by operation of law and no business may be conducted under that license.

NEW RULE V RECORD MAINTENANCE, STORAGE, TRANSFER, AND DESTRUCTION (1) Records may be maintained electronically if the storage system complies with the Fair and Accurate Credit Transactions Act of 2003 (15 USC 1681 et seq.), the Gramm-Leach-Bliley Act (15 USC 6801 et seq.), and the regulations adopted thereunder (16 CFR 314).

(2) A licensed entity shall make all records available to the department in a usable format pursuant to 32-9-121 and 32-9-130, MCA.

(3) An individual who terminates sponsorship with an entity shall relinquish to the entity any records in the individual's possession at the time of termination.

(4) A person who disposes of records at the end of the retention period shall destroy personal information by shredding, burning, erasing, or otherwise making the information indecipherable as required by 30-14-703, MCA, the Fair and Accurate Credit Transactions Act of 2003 (15 USC 1681 et seq.), and the regulations adopted thereunder (16 CFR 682).

(5) A licensed entity that becomes aware of an instance of unauthorized access to customer information shall comply with 30-14-1704, MCA.

AUTH: 32-9-121, 32-9-130, MCA

IMP: 32-9-121, 32-9-124, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-9-121, MCA, requires the department to adopt rules to control the maintenance, transfer, storage, and destruction of records when a licensee ceases business. It also requires the licensee to maintain records in accordance with good business practices. Maintaining personal information of borrowers in a secure manner is not only good business practice, it is the law. Licensees are required to comply with the Montana Mortgage Act and the rules adopted thereunder as well as any other state or federal

law, rules, and regulations adopted under those laws that are applicable to any business covered under the Montana Mortgage Act pursuant to 32-9-124(1)(i), MCA.

To the extent that licensees have borrowers' personal information, they must comply with Gramm-Leach-Bliley (15 USC 6801 et seq.) and the regulations adopted thereunder (16 CFR 314). To the extent that licensees have consumer reporting information, otherwise known as credit reports, they must comply with the Fair and Accurate Credit Transactions Act of 2003 (15 USC 1681 et seq.) and the regulations adopted thereunder (16 CFR 682).

This new rule allows licensees to keep records electronically as long as federal laws and rules regarding the security and destruction of electronic records are met. The department believes that allowing electronic storage will ease the burden on those entities that store records in electronic format.

The records, whether maintained electronically or not, must be available to the department for investigation and examination purposes. Without these records, the department cannot perform its statutory responsibilities. If the records are in a format that cannot be accessed by the examiners, the entity is responsible for converting them into an accessible format and providing them to the department.

If an individual terminates sponsorship with an entity, the individual must relinquish the business records to the entity. As a matter of policy, borrowers' records should be maintained by the entity at the entity's facility, not by the individual. It creates the opportunity for identity theft if individuals keep borrower records at their homes or if an individual leaving a job were able to take borrowers' files with them.

At the end of the retention period set forth in 32-9-121, MCA, records must be destroyed in a manner that does not allow identity theft. They cannot be left in the trash or simply torn up in a manner that would allow them to be pieced back together. The department does not and cannot specify a particular means or method of disposal of records. The licensee is able to determine the most effective and efficient manner of disposal given the volume of records it has, its storage medium, costs, and timing needs. The burden is on the licensee to ensure that, whatever method of disposal is selected, the licensee safeguards personal information by making it indecipherable as required by 30-14-703, MCA, the Fair and Accurate Credit Transactions Act of 2003 (15 USC 1681 et seq.), and the regulations adopted thereunder (16 CFR 682).

If a security breach occurs, despite the entity having taken the necessary steps to prevent it, the entity is required by 30-14-1704, MCA, to notify the owner or licensee of the data of the breach. This language is necessary since licensees may not be aware of this Montana statute and its application to them.

NEW RULE VI RESPONSIBLE PARTY FOR RECORDS (1) If a licensed entity is actively engaged in the business of residential mortgage loans, the entity's designated manager is responsible for proper retention, maintenance, safeguarding, and disposal of records for the whole entity. The designated manager of each branch is responsible for proper retention, maintenance, safeguarding, and disposal of records for the branch managed.

(2) If a licensed entity ceases doing business in Montana, the entity's designated manager, as of the entity's last day of operation as designated on the

NMLS Company Form, is responsible for proper retention, maintenance, safeguarding, and disposal of records as set forth in [NEW RULE V]. The designated manager's failure to properly fulfill this duty may result in revocation or suspension of their license or civil penalties.

AUTH: 32-9-121, 32-9-130, MCA
IMP: 32-9-121, MCA

STATEMENT OF REASONABLE NECESSITY: This new rule makes the entity's designated manager responsible for records management while the entity exists and after it ceases operation. It also assigns responsibility for records management at the branch to the designated manager of the branch. It is necessary to assign direct responsibility for records management to a specific individual so that there is no confusion about who in an entity is responsible for this duty. The designated manager was chosen because that individual must have three years of experience in order to be a designated manager. Section 32-9-122, MCA. The designated manager is responsible for the operation of a particular location under the designated manager's full management, operation, and control. Section 32-9-103(10), MCA. That responsibility includes ensuring the maintenance, storage, retention, and disposal of records.

The problem that arises when an entity ceases operation is that the entity is out of business and it therefore can no longer maintain, store, transfer, or dispose of its records. Yet, borrowers and the department still need the records in the entity's possession. The reason that the borrowers need the records is because they are vitally important records of the single most important financial transaction that most people will make in their lives. In addition, mortgage loan files contain documents that have social security numbers, addresses, account numbers and balances, tax records, verification of income forms, child support costs, divorce decrees, and other sensitive personal information that retains its sensitive nature even after the mortgage company goes out of business. Borrowers have a reasonable expectation that their personal information will be safeguarded, even if an entity ceases operation.

The department needs the information in order to determine whether borrowers have a three-year right to rescission of their mortgage loans because the mortgage loan origination disclosures were improper when made. The borrowers will need copies of relevant documents such as notes, deeds, and mortgages in the event the loan pays off or goes into default. In other states, this has resulted in entities dumping all their records on the department when they cease operations. The state has no choice but to securely store and maintain and dispose of the records.

The department has no facilities, and no budget, to store, maintain, and dispose of records of licensees who have ceased doing business. Instead, this proposed new rule makes the designated manager of the entity responsible for the proper retention, maintenance, safeguarding, and disposal of records as set forth in New Rule V. The entity's designated manager was chosen because this individual is a high ranking official in the company who will have the resources to accomplish this task. The designated manager must be individually licensed so the manager would

have a strong incentive to properly protect records because the failure to do so will jeopardize the manager's license.

NEW RULE VII MONTANA SPECIFIC ESCROW FUND (1) A mortgage servicer shall establish an escrow fund specifically for Montana residential mortgage loans being serviced. The escrow fund must contain only money related to Montana residential mortgage loans.

AUTH: 32-9-130, MCA
IMP: 32-9-145, MCA

STATEMENT OF REASONABLE NECESSITY: HB 90 amended 32-9-145, MCA, to require a mortgage servicer to hold money received from a borrower on Montana residential mortgage loans in an escrow account that meets the requirements of 32-9-145, MCA. This rule is necessary to ensure that the escrow account contains money only from Montana residential mortgage loans.

In examining mortgage servicers, the department has found that some large servicers have one escrow account for all the loans they service, regardless of where the loan is located. This has resulted in a situation in which examiners requested escrow account statements and received over 1,000 pages in response. It was literally impossible to determine which payment was for which loan. In this instance, only a very few were loans located in Montana. It made it impossible for the examiners to track the money paid on Montana loans to determine where it went. This is a critical part of the examination process, and the examiners were unable to determine whether payments made on Montana loans were processed correctly.

This rule is designed to make it clear that 32-9-145, MCA, means that the escrow account held by a mortgage servicer must be a Montana-specific account, or an account which is dedicated only to Montana residential mortgage loans, not an account comingled with loans from all other states.

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

2.59.1701 DEFINITIONS For purposes of the Montana Mortgage ~~Broker,~~ Mortgage Lender, and Mortgage Loan Originator Licensing Act and this subchapter, the following definitions apply:

(1) remains the same.

~~(2) "Dwelling" means a residential structure that contains one to four residential units whether or not that structure is attached to real property and includes an individual condominium unit, cooperative unit, mobile home, and a trailer, if used as a residence.~~

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

~~(6)~~ (5) "Material change" means:

(a) through (e) remain the same.

(f) the acquisition or disposition of another company; or

~~(g) any civil action involving fraud or dishonesty has been filed against the licensee;~~

~~(h) any criminal charge has been filed against the licensee; or~~

~~(i) remains the same, but is renumbered (g).~~

~~(7) "Mortgage loan servicer" means one who performs traditional mortgage loan servicing tasks such as sending monthly payment statements; collecting monthly payments; maintaining records of payments and balances; collecting and paying taxes and insurance; remitting funds to note holders; or following up on delinquencies provided the follow-up does not include offering or negotiating loan modifications or refinances.~~

(6) "Personal information" means:

(a) a customer's name, address, or telephone number, in conjunction with the customer's social security number, date of birth, driver's license number, account number, credit or debit card number, or a personal identification number or password that would permit access to the customer's account; or

(b) any combination of components of customer information that would allow an unauthorized third party to access the customer's account electronically, such as user name and password or password and account number.

~~(8) remains the same, but is renumbered (7).~~

(8) "Safeguard" means to prevent unauthorized access, use, disclosure, or dissemination.

~~(9) through (11) remain the same.~~

AUTH: 32-9-121, 32-9-125, 32-9-130, MCA

IMP: 32-9-109, 32-9-116, 32-9-117, 32-9-121, 32-9-122, 32-9-123, 32-9-125, 32-9-133, MCA

STATEMENT OF REASONABLE NECESSITY: HB 90 amended the name of the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act to the Montana Mortgage Act. The corresponding change is being made in rule to make it consistent with statute.

HB 90 includes a definition of "dwelling" in 32-9-103(11), MCA, and a definition of "mortgage servicer" in 32-9-103(25), MCA. These two definitions are being removed from rule so as not to unnecessarily duplicate statutory language.

HB 90 requires the reporting of a civil or criminal action initiated against the licensee within 15 business days of its occurrence (32-9-166, MCA). Applicants for renewal are required to attest that there has not been a material change in the status of the license for the preceding 12 months as part of the annual renewal process. See 32-9-117, MCA. Since the initiation of a civil or criminal action against the licensee will be separately reported within 15 business days of its occurrence, it is no longer necessary to report them as material changes, and so the sections of material change as being any civil action involving fraud or dishonesty has been filed against the licensee and any criminal charge has been filed against the licensee are removed from the material change definition.

Two new definitions are being added to this rule. Both relate to the records maintenance, transfer, and storage found in 32-9-121, MCA. The first is the definition of personal information. Mortgage files are replete with borrowers' personal information including social security numbers, account numbers and balances, debit and credit card numbers and balances, paystubs, and tax records.

In storing, transferring, maintaining, and destroying records, this data must be kept secure because otherwise it would be a treasure trove for identity thieves. The definition of "personal information" identifies the type of information that must be safeguarded. This information was chosen because it is particularly valuable to identity thieves. With the information listed in (6)(a) and (b) or parts of that information, an identity thief could either access an existing account or set up a new account using the identity of the victim. Either of these options is not good for the victim who stands to have money stolen and his or her credit ruined.

The definition of "safeguard" is broad enough to allow many means of data protection. If the data is in paper form, it must be safeguarded by physical means, such as locking and preventing unauthorized access. If the data is electronic, it must be safeguarded using electronic means, encryption, secure passwords, or a separate server to which only authorized persons have access or other electronic method. The definition is purposely being kept broad because each storage system is different. No specific means of safeguarding can be defined that will fit every situation. The department is not mandating a particular method or manner of securing sensitive data, only that the data be secure. The security chosen will be up to the entity based on its needs, size, and sophistication. However, whatever method is chosen, it must be secure.

Section 32-9-121, MCA, is being added as both an authority and implemented statute. This is because it contains the authority for rulemaking, and new definitions (6) and (8) provide clarity to requirements regarding the maintenance, storage, transfer, and destruction of records.

2.59.1703 TRANSFER OF LOAN ORIGINATOR LICENSE (1) Transfer of an individual mortgage loan originator license from one entity to another must be approved by the department. To transfer an individual mortgage loan originator license, the individual mortgage loan originator shall ~~obtain a relocation application from the department.~~ request sponsorship through the NMLS by the new entity. The new entity must accept sponsorship of the individual through the NMLS. The ~~completed relocation application~~ request for sponsorship must be accompanied by a nonrefundable processing fee of \$50.

~~(a) If a license is not transferred within six months and has been canceled, a complete new application with all required information must be submitted along with the appropriate new application fees and supporting documentation.~~

~~(b) If the lapse in employment occurs over a renewal period, the individual mortgage loan originator license must be renewed as required by 32-9-117, MCA, to qualify for a transfer of the license. The relocation six-month time frame would remain in effect and would be from the date of termination from the previous licensed entity.~~

~~(2) If an individual mortgage loan originator is terminated by a mortgage broker or lender, and within six months is re-employed by the same mortgage broker or lender, a request for reinstatement form must be filed with the department. The form is available from the department. There is a \$10 processing fee for reinstatement. If the break in employment occurs over a renewal period, the individual mortgage loan originator license must be renewed as required by 32-9-~~

~~117, MCA, to qualify for reinstatement. The six-month time frame would remain in effect and would be from the date of termination.~~

AUTH: 32-9-130, MCA

IMP: 32-9-116, 32-9-117, MCA

STATEMENT OF REASONABLE NECESSITY: Now that Montana processes its mortgage-related licenses through the NMLS, sponsorship requests must be made online through the NMLS. The sponsorship process through NMLS is a two-step process. First, the mortgage loan originator must request sponsorship by the company. Then the company must accept the individual it sponsors. The sponsorship is not complete until both steps have been completed and the fee has been paid.

Since Montana is on the NMLS, unsponsored licenses are now placed into an "Approved-Inactive" status. The license will remain in that status until it expires for failure to renew. Montana no longer has a six-month period to become sponsored before the license is "cancelled." "Cancelled" is an obsolete term no longer used by the NMLS. This rule is being amended to make the sponsorship process and terminology consistent with the NMLS.

The department is deleting (2), which addresses an individual who terminates from one employer and is re-employed with them within six months. This section has rarely been used; in fact, department employees can recall using this rule twice in the past five years. And since the process for sponsorship is exactly the same regardless of whether the sponsoring entity is a new entity or the old one, it does not make sense any longer to charge less for re-sponsorship than for initial sponsorship. The same amount of staff time is involved in sponsorship as in a re-sponsorship. Eliminating the \$10 reinstatement fee will have no fiscal impact. This fee was rarely utilized and the department assumes there will be no reinstatements meeting these criteria in the future.

2.59.1706 SURETY BOND (1) The surety bond shall be issued by a surety company authorized to do business in the state of Montana. The bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be placed on file with the department. The entity name on the application and on the surety bond must match exactly. The bond shall be continuous ~~and may be cancelled by the surety upon the surety giving 30 days written notice to the department of its intent to cancel the bond.~~ Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond.

(2) remains the same.

AUTH: 32-9-130, MCA

IMP: 32-9-123, MCA

STATEMENT OF REASONABLE NECESSITY: HB 90 amended 32-9-123, MCA, to include language regarding cancellation of a surety bond. Since this language is now in statute, it is being removed from the rule so as not to unnecessarily duplicate the statutory language.

2.59.1707 REVOCATION, SUSPENSION, OR SURRENDER OF LICENSE

(1) A licensee may offer to surrender a license by ~~delivering to the department written notice of the offer of surrender~~ submitting an offer of surrender or withdrawal of a license through the NMLS. An offer of surrender or accepted surrender does not affect the licensee's civil or criminal liability for acts initiated or committed while licensed.

~~(2) The department may refuse to accept the offer of surrender of a license if:~~

~~(a) a final order has been issued in an enforcement action and the licensee has not fully complied with the order regardless of whether compliance is yet due;~~

~~(b) the licensee has violated, or is under investigation for a suspected violation of, the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act or any rule in this subchapter;~~

~~(c) there is an enforcement action or complaint pending against the licensee;~~

~~or~~

~~(d) the licensee has not made arrangements satisfactory to the department regarding loans in process at the time of the offer of surrender.~~

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

AUTH: 32-9-130, MCA

IMP: 32-9-126, MCA

STATEMENT OF REASONABLE NECESSITY: The first sentence of the rule is being amended to reflect the fact that Montana uses the NMLS to license mortgage entities. Licensees no longer submit written notices to the department. Instead, they request withdrawal or surrender through the NMLS. The language being removed from (2) is now contained in statute. See 32-9-126(6), MCA. Since this language is now in statute, it is being removed from the rule so as not to unnecessarily duplicate the statutory language.

2.59.1709 CONSUMER COMPLAINT PROCESS (1) A complaint form ~~will be~~ is provided by the department at <http://www.banking.mt.gov>. A complaint must be submitted in writing to the department. If the basis of the complaint relates to the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act, it will be investigated by the department or designated party.

AUTH: 32-9-130, MCA

IMP: 32-9-130, MCA

STATEMENT OF REASONABLE NECESSITY: HB 90 changed the name of the statutes found at Title 32, chapter 9, part 1, MCA, from the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act to the

Montana Mortgage Act. The rule is being changed to conform to the new statutory language.

The complaint form is available on the department's web site at <http://www.banking.gov>. The web site address has been added to clarify where the complaint form is accessible.

2.59.1725 LICENSING EXEMPTIONS AND VOLUNTARY REGISTRATION BY EXEMPT ENTITIES WITH THE NATIONWIDE MORTGAGE LICENSING SYSTEM (NMLS)

~~(1) Any person claiming to be exempt under 32-9-104(1)(f), (h), or (i), MCA, from the licensing requirements of the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act must receive an exemption from the department before engaging in activities claimed to be exempt. A claim form may be found online at www.banking.mt.gov.~~

~~(2) A mortgage company entity that is exempt from licensing requirements under 32-9-104, MCA, may voluntarily register through NMLS for the purpose of sponsoring a mortgage loan originator licensee or license applicant. Any fee for such an exempt registration must be determined is set by NMLS and must be is payable as directed by NMLS.~~

~~(3) For purposes of the licensing exemption in 32-9-104(1)(j), MCA, "bona fide low income individuals" are individuals:~~

~~(a) whose income is not more than two times the U.S. Department of Health and Human Services Poverty Guidelines for Montana in effect at the time the loan application is processed, adjusted for size of household, as published in the Federal Register under authority of 42 USC 9902(2);~~

~~(b) whose income does not exceed 115% of the median income in the applicable area of Montana as determined by the U.S. Department of Housing and Urban development, adjusted for size of household; or~~

~~(c) who are eligible under the income criteria for Habitat for Humanity housing assistance in the Montana county of the individual's residence.~~

AUTH: 32-9-130, MCA

IMP: 32-9-104, MCA

STATEMENT OF REASONABLE NECESSITY: The Nationwide Mortgage Licensing System has already been used and abbreviated as NMLS in these rules. HB 90 changed the name of the statutes found at Title 32, chapter 9, part 1, MCA, from the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act to the Montana Mortgage Act. The rule is being changed to conform to the new statutory language.

Subsections (1)(f), (h), or (i) of 32-9-104, MCA, are listed for clarity since two other subsections of the statute, 32-9-104(1)(b) and (1)(c), MCA, utilize the MU1R and MU4R filed with the NMLS as the exemption form. Other subsections of 32-9-104, MCA, require different exemption forms which will be implemented by separate rulemaking.

The language removed from (2) is now contained in statute; the language is being removed from the rule so as not to unnecessarily repeat statutory language.

"Exempt" is being added in order to identify which fee is referenced.

On June 30, 2011, the Department of Housing and Urban Development (HUD) promulgated final rules found at 24 CFR 3400 et seq. interpreting the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act), Public Law 110-289. These rules became effective on August 29, 2011. Montana must comply with the federal SAFE Act and rules promulgated thereunder. The final HUD rules provide that an employee of a bona fide nonprofit organization who acts as a loan originator only with respect to the work duties to the bona fide nonprofit organization and who acts as a loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower is not required to be licensed by the states. The final HUD rules also define the factors to be considered in order to determine whether an organization is a bona fide nonprofit organization at 24 CFR 3400.103(7)(ii). The factors defined in the federal rules are not consistent with the factors in the state rules. The state rules must be repealed to leave the federal rules in place. Additional statutory changes and administrative rulemakings will be needed to conform Montana law with the final HUD rules.

2.59.1727 MORTGAGE LOAN ORIGINATOR LICENSING EXAM RETAKES

(1) remains the same.

(2) Retakes of the mortgage loan originator licensing examination following failed attempts and the waiting periods applicable to retakes are governed by the following table:

TEST ATTEMPT	TEST RESULT	RETAKE WAITING PERIOD
Initial	Fail	30 days
2nd	Fail	30 days
3rd	Fail	30 180 days
4th	Fail	180 days
Initial	Fail	30 days

(Retake cycle repeats)

(3) through (6) remain the same.

AUTH: 32-9-130, MCA

IMP: 32-9-110, MCA

STATEMENT OF REASONABLE NECESSITY: HUD issued final rules interpreting the SAFE Act on June 30, 2011. Those rules clarified the meaning of 32-9-110(6), MCA. 24 CFR 3400.105(e)(2) provides the individual may take the test three consecutive times, with each retest 30 days after the preceding test. If an individual fails three consecutive tests, the individual must wait six months before taking the test again. The Montana rule is being amended to conform to the new federal rules.

2.59.1728 ADOPTION OF STANDARDIZED FORMS AND PROCEDURES

OF THE NMLS (1) ~~The Nationwide Mortgage Licensing System~~ NMLS Policy Guidebook dated January 25, 2010 April 16, 2012, is incorporated ~~approved~~ and

adopted by reference. It can be found at <http://mortgage.nationwidelicencingsystem.org/slr/common/policy/Pages/default.aspx>.

(2) The following standardized NMLS forms relating to licensing are approved and adopted by reference:

(a) ~~MU1 Uniform Mortgage Lender/Mortgage Broker form~~ NMLS Company Form dated ~~January 25, 2010~~ March 19, 2012;

(b) ~~MU2 Uniform Mortgage Biographical Statement & Consent Form~~ dated ~~January 25, 2010~~;

(c) ~~MU3 Uniform Mortgage Branch Office form~~ NMLS Branch Form dated ~~January 2, 2008~~ March 19, 2012; and

(d) ~~MU4 Uniform Individual Mortgage License/Registration & Consent NMLS Individual Form~~ dated ~~January 25, 2010~~ March 19, 2012;

(d) Mortgage Uniform 1 Registry (MU1R) version 1 dated January 27, 2011;

(e) Mortgage Uniform 4 Registry (MU4R) version 1 dated January 27, 2011;

(f) Uniform Company Renewal Checklist dated September 15, 2010; and

(g) Uniform Individual Renewal Checklist dated September 15, 2010.

(3) Copies of the NMLS forms are available on the department's NMLS web site ~~www.banking.mt.gov~~ www.mortgage.nationwidelicencingsystem.org for review and informational purposes only. All standardized forms to be submitted to the department must be accessed ~~through NMLS~~ and submitted electronically through the NMLS. Supplemental hard copy materials required for verification of qualifications must be submitted to the department through the NMLS ~~and submitted electronically~~. ~~Supplemental hard copy materials required for verification of qualifications must be submitted to the department at Division of Banking and Financial Institutions, 301 S. Park Ave., P.O. Box 200546, Helena, MT 59620-0546.~~

AUTH: 32-9-130, MCA

IMP: 32-9-105, ~~32-9-107~~, 32-9-112, ~~32-9-114~~, 32-9-117, ~~32-9-118~~, ~~32-9-127~~, 32-9-130, MCA

STATEMENT OF REASONABLE NECESSITY: The rule amendments are necessary because the NMLS policy guidebook was updated on April 12, 2012. The intent of the rule is to utilize the current version of the guidebook, not the prior version. In addition, correction of the location of the NMLS forms (the NMLS web site, not the department web site) needs to be made clear. All standardized forms submitted to the department must be submitted electronically through the NMLS. The two new NMLS exemption forms, MU1R and MU4R, are being adopted by reference as the department's required forms. The NMLS renewal forms are also being adopted by reference. The other forms have been updated since we last adopted them by reference. The department is adopting the current version by reference.

Sections 32-9-107 and 32-9-118, MCA, are being deleted because those sections are not being implemented by this rule. Sections 32-9-114 and 32-9-127, MCA, have been repealed and can no longer be implemented by this rule. Section 32-9-130, MCA, is being added because that statute requires the department to adopt rules prescribing forms for applications.

2.59.1730 CONFIDENTIALITY – AGREEMENTS AND SHARING ARRANGEMENTS (1) In addition to the trade associations specifically named in 32-9-160(2), MCA, the department may enter into agreements or sharing arrangements allowing the sharing of information and material with the following governmental agencies and associations representing governmental agencies:

- (a) State Regulatory Registry, LLC; and
- (b) Multi-State Mortgage Committee;
- (c) Federal Housing Administration;
- (d) Consumer Financial Protection Bureau;
- (e) United States Department of Housing and Urban Development;
- (f) Federal Trade Commission; and
- (g) Financial Crimes Enforcement Network (FinCEN).

AUTH: 32-9-130, 32-9-160, MCA
IMP: 32-9-160, MCA

STATEMENT OF REASONABLE NECESSITY: Since the NMLS has come into existence, several other governmental regulatory agencies have sought information sharing and confidentiality agreements with the states that are on the NMLS. They are the Federal Housing Administration, the Consumer Financial Protection Bureau, the United States Department of Housing and Urban Development (HUD), Federal Trade Commission, and FinCEN. The department needs the authority to enter into agreements and information sharing arrangements with these governmental agencies in order to fulfill its mission to protect consumers in Montana.

Since the Consumer Financial Protection Bureau is the regulator of the department, the department must share records with the Bureau, or it will find the department out of compliance with the SAFE Act. The Federal Housing Administration is the entity that provides mortgage insurance to a large number of residential mortgage loans made in this country. The Federal Housing Administration is part of HUD. Those two agencies both have need for access to the records in the NMLS because they require all entities and individuals in the loan origination process be licensed and in good standing in the NMLS in order to make government-insured loans. The Federal Trade Commission is the agency that has jurisdiction over unfair and deceptive acts and practices. The sharing of information with these two entities allows them to ensure that Montana borrowers are dealing with properly licensed entities and individuals.

2.59.1731 REINSTATEMENT OF EXPIRED OR SUSPENDED LICENSES

(1) Upon expiration of a license under 32-9-117, MCA, due to nonrenewal by the renewal date, the licensee shall immediately cease from engaging in the activities for which the license was issued. Except as provided in (3), the department may reinstate an expired license, provided that, ~~within 30 days of the date of expiration,~~ by the last day of February following expiration of the license, the following are submitted:

- (a) through (d) remain the same.

(e) proof that the licensee continues to meet standards for licensure under 32-9-1270, MCA; and

(f) remains the same.

(2) An expired license that is not reinstated by the last day of February within ~~30 days of the date of expiration~~ in accordance with (1) is cancelled "Terminated-Failed to Renew" and may not be reinstated except as provided in (3). The holder of a ~~cancelled~~ "Terminated-Failed to Renew" license may reapply as a new license applicant.

(3) If ~~nonrenewal and expiration~~ "Terminated-Failed to Renew" status of the license of a military member or reservist was the result of the licensee being on active duty status at the time of renewal, the license may be reinstated, if within 30 days of the licensee's discharge from active duty status, the department receives through NMLS an acceptable sponsorship request from the licensee's employing mortgage broker or mortgage lender and it receives outside of the NMLS renewal process within that 30-day period, the following:

(a) remains the same.

(b) a full year renewal fee ~~or, if the application is submitted on or after July 1, a half-year renewal fee;~~

(c) remains the same.

(d) proof of completion of ~~42~~ eight hours of approved continuing education;

(e) remains the same.

(f) proof that the licensee continues to meet standards for licensure under 32-9-1270, MCA.

(4) Upon suspension of a license under 32-9-126, MCA, the licensee shall immediately cease from engaging in the activities for which the license was issued. The department may lift the suspension and reinstate the license upon its determination that the suspended licensee has complied with the terms and conditions of the final order by which the license was suspended and there is no fact or condition then existing that disqualifies the suspended licensee from being licensed. The department on its own or at the suspended licensee's request may initiate a review of a suspended licensee's compliance with the terms and conditions of the order suspending the license.

AUTH: 32-9-130, MCA

IMP: 32-9-117, 32-9-118, 32-9-120, 32-9-126, MCA

STATEMENT OF REASONABLE NECESSITY: The reinstatement period is being changed from 30 days to the end of February because HB 90 repealed the half year fee. Since licensees no longer have a financial incentive to delay licensure if they miss the renewal deadline, Montana is adopting the NMLS reinstatement period in order to be consistent with other states. The NMLS reinstatement period is from January 1 to the last day of February, which is either the 28th or 29th depending on whether or not it is a leap year. This makes Montana consistent with other states and allows licensees more uniformity.

"Cancelled" is an obsolete term not used in the NMLS. The proper license status in NMLS is "Terminated-Failed to Renew" and the rule is being amended to reflect the license status in NMLS.

HB 90 repealed the half-year fee so it is being removed from the rule. Section 32-9-118, MCA, changed the number of continuing education credits required per year from 12 to 8. The rule is being amended to reflect these changes.

HB 90 repealed 32-9-127, MCA. Instead, 32-9-120, MCA is the statute used to license or renew licenses of applicants.

"Suspended" is being added to (4) to make clear the licensee referenced is the suspended licensee.

Due to the changes in HB 90, both 32-9-118 and 32-9-120, MCA, are added as implemented statutes.

5. The department proposes to repeal the following rules based on legislative changes that rendered these rules unnecessary:

2.59.1721 NET WORTH REQUIREMENT FOR MORTGAGE BROKERS, found on Administrative Rules of Montana (ARM) page 2-6143.

AUTH: 32-9-114, MCA

IMP: 32-9-123, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-9-114, MCA, was repealed by HB 90. Section 32-9-123, MCA, was amended in the 2011 session; it no longer allows a mortgage broker to use net worth in lieu of a surety bond and so the rule must be repealed.

2.59.1722 UNACCEPTABLE ASSETS, found on ARM page 2-6144.

AUTH: 32-9-114, MCA

IMP: 32-9-123, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-9-114, MCA, was repealed by HB 90. Section 32-9-123, MCA, was amended in the 2011 session; it no longer allows a mortgage broker to use net worth in lieu of a surety bond and so the rule must be repealed.

2.59.1723 PROOF OF NET WORTH, found on ARM page 2-6145.

AUTH: 32-9-114, MCA

IMP: 32-9-123, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-9-114, MCA, was repealed by HB 90. Section 32-9-123, MCA, was amended in the 2011 session; it no longer allows a mortgage broker to use net worth in lieu of a surety bond and so the rule must be repealed.

2.59.1732 MORTGAGE CALL REPORTS, found on ARM page 2-6150.5.

AUTH: 32-9-130, MCA

IMP: 32-9-151, MCA

STATEMENT OF REASONABLE NECESSITY: The language of this rule is now contained in statute. So the rule is being repealed so as not to unnecessarily repeat statutory language.

2.59.1736 DEADLINE FOR CONDITIONALLY LICENSED MORTGAGE LOAN ORIGINATORS TO COMPLETE THE MONTANA EXAM, found on ARM page 2-6150.6.

AUTH: 32-9-130, MCA

IMP: 32-9-114, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-9-114, MCA, has been repealed so the rule is no longer necessary.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov, and must be received no later than 5:00 p.m., May 29, 2012.

7. Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, has been designated to preside over and conduct the hearing.

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

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

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Walt McNutt, was contacted by mail on May 20, 2011.

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

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

Certified to the Secretary of State April 16, 2012.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of) NOTICE OF PUBLIC HEARING ON
ARM New Rule I relating to the Eurasian) PROPOSED ADOPTION
Watermilfoil Management Area)

TO: All Concerned Persons

1. On May 17, 2012, at 3:00 p.m. the Montana Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 302 N. Roberts at Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact Department of Agriculture no later than 5:00 p.m. on May 10, 2012, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen at the Montana Department of Agriculture, 302 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; phone: (406) 444-3144; fax: (406) 444-5409; or e-mail: agr@mt.gov.

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

NEW RULE I EURASIAN WATERMILFOIL MANAGEMENT AREAS (1) The Upper Missouri River Eurasian Watermilfoil Management Area is created covering Beaverhead, Madison, Jefferson, Lewis & Clark, Broadwater, and Gallatin Counties. The Lower Missouri River Eurasian Watermilfoil Management Area is created covering Valley, Phillips, McCone, Richland, Garfield, and Petroleum Counties.

(2) The inspection stations will be mandatory for all water vessels, including live wells and trailers, and the inspection stations may mandate cleaning if the vessels appear to be potentially contaminated.

AUTH: 80-7-1007, MCA

IMP: 80-7-1007, 80-7-1008, 80-7-1009, 80-7-1010, 80-7-1011, 80-7-1012, 80-7-1014, MCA

REASON: The purpose of the management area is to prevent the spread of Eurasian watermilfoil. Eurasian watermilfoil is a state listed noxious weed. The plant is an extremely aggressive, non-native aquatic weed that poses a serious threat to Montana's rivers, lakes, and irrigation infrastructure. Eurasian watermilfoil's environmental effects include the reduction of water quality, displacement of native plant communities, decreased sport fish populations through lower predation success and reduced spawning, and increased habitat for undesirable species, such as mosquitoes, that may spread diseases to humans and parasites that cause swimmer's itch. The economic impacts include reduced recreational value through

the loss of angling, boating, swimming, water skiing and near shore recreation, reduced profitability of agricultural production by clogging ditches, canals, farm ponds, and irrigation equipment, decreased property values and increased costs for electrical generation and municipal water supplies.

The limited number of infested acres permits feasible and cost effective containment. The primary means by which Eurasian watermilfoil can be spread is through plant fragments entrained on watercraft and boat trailers. The high recreational use and movement of watercraft from these water bodies to the rest of Montana combined with the significant impacts of this noxious weed creates a significant risk to Montana. The management areas will help prevent the spread of Eurasian watermilfoil through the education of boaters and inspection of watercraft and trailers leaving the infested water bodies.

FINANCIAL IMPACT: An accurate estimate of the financial impact is not measurable, but is expected to be small to nonexistent as there is no charge for the inspection stations created by the management area and the most affected individuals will have their vessel decontaminated at no cost.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may be submitted to: Cort Jensen at the Montana Department of Agriculture, 302 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; telephone (406) 444-3144; fax: (406) 444-5409; or e-mail: agr@mt.gov, and must be received no later than 5:00 p.m. on May 24, 2012.

5. Cort Jensen, Department of Agriculture, has been designated to preside over and conduct this hearing.

6. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail, and mailing address of the person and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Montana Department of Agriculture, 302 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

7. An electronic copy of this Notice of Proposed Adoption is available through the department's web site at www.agr.mt.gov, under the Administrative Rules section. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to

keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on April 16, 2012 by regular mail, e-mail, and phone. For previous rule projects involving the same bill, the primary sponsor was given appropriate notice.

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, April 16, 2012.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of new	)	NOTICE OF PUBLIC HEARING ON
Rule I and Rule II pertaining to the	)	PROPOSED ADOPTION AND
implementation of the Big Sky	)	REPEAL
Economic Development Trust)	
Program and the repeal of ARM)	
8.99.901, 8.99.902, 8.99.903,)	
8.99.904, 8.99.905, 8.99.906,)	
8.99.907, 8.99.908, 8.99.909,)	
8.99.910, 8.99.911, 8.99.912,)	
8.99.913, 8.99.914 , 8.99.915,)	
8.99.916 pertaining to the)	
implementation of the Big Sky)	
Economic Development Trust)	
Program)	

TO: All Concerned Persons

1. On May 17, 2012, at 1:00 p.m., the Department of Commerce will hold a public hearing in Room 228, of the Park Avenue Building, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., May 11, 2012, to advise us of the nature of the accommodation that you need. Please contact Nancy Faroni, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 841-2744; TDD (406) 841-2731; facsimile (406) 841-2771; or e-mail to nfaroni@mt.gov.

3. The rules are proposed to be adopted provides as follows:

NEW RULE I INCORPORATION BY REFERENCE OF RULES
GOVERNING SUBMISSION AND REVIEW OF APPLICATIONS

(1) The department adopts and incorporates by reference the Big Sky Economic Development Trust Fund Application Guidelines, with the most current guidelines being posted on the Big Sky Economic Development Trust Fund web site, as rules governing the submission and review of applications under the program.

(2) The guidelines incorporated by reference relate to the following:

- (a) program inquiries;
- (b) program funding;
- (c) application deadlines;
- (d) eligibility;

- (e) program requirements;
- (f) penalties;
- (g) application procedures;
- (h) review of applications; and
- (i) procedures for accessing funds.

AUTH: 90-1-204, MCA

IMP: 90-1-203, 90-1-204, 90-1-205, MCA

REASON: The Big Sky Economic Development Trust Fund Application Guidelines are incorporated, by reference, into the rules to streamline the process for applicants and thereby making the program more accessible and easily understood.

NEW RULE II PROGRAMMATIC REQUIREMENTS

(1) The department has established the following distribution method, for non administrative expenses, of the Big Sky Economic Development Trust Funds:

(a) 75% must be allocated for distribution to local governments and tribal governments to be used for job creation projects; and

(b) 25% must be distributed to certified regional development corporations, tribal governments, and eligible economic development organizations for economic development planning activities.

(2) The department has established the following eligible use of Big Sky Economic Development Trust Funds:

(a) Awards to local governments and tribal governments for job creation projects shall include, but are not limited to:

(i) purchase of land, building, or equipment for the direct use of the assisted business;

(ii) lease rate reduction for lease of publicly or privately owned real property for the direct use of the assisted business;

(iii) relocation costs incurred in connection with moving the assisted business's physical assets to Montana;

(iv) employee training; and

(v) administration.

(b) Awards to certified regional development corporations, tribal governments, and other eligible economic development organizations shall include the following economic development planning activities:

(i) support for business improvement districts and central business district redevelopment;

(ii) industrial development;

(iii) feasibility studies;

(iv) creation and maintenance of baseline community profiles;

(v) matching funds for federal funds; and

(vi) administration.

(3) The maximum funding levels are as follows:

(a) Local governments and tribal governments may not exceed \$5,000 for each eligible job to be created by an eligible business, except that funding for a project in a high-poverty county may not exceed \$7,500 for each eligible job.

(b) The eligible jobs used as the basis for determining the award amount shall be net new jobs to the business associated with the project in Montana and shall not include jobs transferred from any existing Montana operations of the business or any related entity.

(4) Entities must provide matching funds as specified below:

(a) Local governments and tribal governments shall provide equal matching funds for all job creation awards allocated under the program, except that the department may allow a 50% to 100% match requirement for projects located in a high-poverty county.

(b) Certified regional development corporations, tribal governments and other eligible economic development organizations may be required to document or provide matching funds for economic development planning awards allocated under the program.

(5) The department will require full or partial repayment of the award, if the assisted business fails to create or maintain the number of net new eligible jobs as specified in the executed contract.

AUTH: 90-1-204, MCA

IMP: 90-1-203, 90-1-204, 90-1-205, MCA

REASON: The Programmatic Requirements rule provides specific information concerning the statutory requirements of the program.

4. The department proposes to repeal the following rules:

8.99.901 DEFINITIONS, found at page 8-3661 of the Montana Administrative Rules of Montana.

AUTH: 90-1-201, MCA

IMP: 90-1-201, MCA

8.99.902 SCOPE AND PURPOSE OF ADMINISTRATIVE RULES, found at page 8-3662 of the Montana Administrative Rules of Montana.

AUTH: 90-1-204, MCA

IMP: 90-1-204, MCA

8.99.903 PURPOSE OF BIG SKY ECONOMIC DEVELOPMENT PROGRAM, found at page 8-3662 of the Montana Administrative Rules of Montana.

AUTH: 90-1-202, MCA

IMP: 90-1-202, MCA

8.99.904 INCORPORATION BY REFERENCE OF RULES GOVERNING SUBMISSION AND REVIEW OF APPLICATIONS, found at page 8-3662.1 of the Montana Administrative Rules of Montana.

AUTH: 90-1-204, MCA
IMP: 90-1-204, MCA

8.99.905 DISTRIBUTION OF FUNDS FROM THE BIG SKY ECONOMIC DEVELOPMENT ACCOUNT, found at page 8-3662.1 of the Montana Administrative Rules of Montana.

AUTH: 90-1-205, MCA
IMP: 90-1-205, MCA

8.99.906 ENTITIES BARRED FROM RECEIVING FUNDS, found at page 8-3662.1 of the Montana Administrative Rules of Montana.

AUTH: 90-1-204, MCA
IMP: 90-1-204, MCA

8.99.907 FORM OF FINANCIAL ASSISTANCE, found at page 8-3662.2 of the Montana Administrative Rules of Montana.

AUTH: 90-1-203, MCA
IMP: 90-1-203, MCA

8.99.908 MAXIMUM AWARD AMOUNT, found at page 8-3662.2 of the Montana Administrative Rules of Montana.

AUTH: 90-1-204, MCA
IMP: 90-1-204, MCA

8.99.909 AWARD LIMITATIONS, found at page 8-3662.2 of the Montana Administrative Rules of Montana.

AUTH: 90-1-204, MCA
IMP: 90-1-204, MCA

8.99.910 AWARD MATCH REQUIREMENT, found at page 8-3662.2 of the Montana Administrative Rules of Montana.

AUTH: 90-1-204, MCA
IMP: 90-1-204, MCA

8.99.911 ELIGIBLE USES OF AWARDS, found at page 8-3662.3 of the Montana Administrative Rules of Montana.

AUTH: 90-1-204, MCA
IMP: 90-1-204, MCA

8.99.912 ELIGIBLE BUSINESS, found at page 8-3662.3 of the Montana Administrative Rules of Montana.

AUTH: 90-1-204, MCA
IMP: 90-1-204, MCA

8.99.913 APPLICATION REVIEW PROCEDURE, found at page 8-3662.3 of the Montana Administrative Rules of Montana.

AUTH: 90-1-204, MCA
IMP: 90-1-204, MCA

8.99.914 AWARD DECISION CRITERIA, found at page 8-3662.4 of the Montana Administrative Rules of Montana.

AUTH: 90-1-204, MCA
IMP: 90-1-204, MCA

8.99.915 ABILITY TO REQUEST ADDITIONAL INFORMATION, found at page 8-3662.4 of the Montana Administrative Rules of Montana.

AUTH: 90-1-204, MCA
IMP: 90-1-204, MCA

8.99.916 FAILURE TO PROVIDE INFORMATION, found at page 8-3662.4 of the Montana Administrative Rules of Montana.

AUTH: 90-1-204, MCA
IMP: 90-1-204, MCA

REASON: The rules are being rewritten to streamline the process for the applicants, making the program more accessible and easily understood.

5. Concerned persons may submit their data, views, or arguments in written form or a request for opportunity to submit data, views, or arguments in oral form to: Nancy Faroni, Department of Business Resources Division, 301 South Park Avenue, P.O. Box 200501, Helena, Montana, 59620-0501; telephone (406) 841-2744; TDD (406) 841-2731; facsimile (406) 841-2771; or e-mail to nfaroni@mt.gov, and must be received no later than 5:00 p.m., May 26, 2012.

Nancy Faroni, Section Manager, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may 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 Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to bmartello@mt.gov, or by completing a request form at any rules hearing held by the Department.

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

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

/s/ MARTY TUTTLE
MARTY TUTTLE
Rule Reviewer

/s/ DORE SCHWINDEN
DORE SCHWINDEN
Director
Department of Commerce

Certified to the Secretary of State April 13, 2012.

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

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARINGS ON
RULE I, II, and III regarding bodies of) PROPOSED ADOPTION
water identified as contaminated with)
Eurasian watermilfoil)

TO: All Concerned Persons

1. On May 24, 2012 at 6:00 p.m. the Department of Fish, Wildlife and Parks (department) will hold a public hearing at the Fish, Wildlife and Parks Region 4 office located at 4600 Giant Springs Road, Great Falls, Montana to consider the proposed adoption of the above-stated rules.

On May 24, 2012 at 6:00 p.m. the department will hold a public hearing at the Fish, Wildlife and Parks Headquarter office located at 1420 East 6th Avenue, Helena, Montana to consider the proposed adoption of the above-stated rules.

On May 29, 2012 at 6:00 p.m. the department will hold a public hearing at the Fish, Wildlife and Parks office located at 215 West Aztec Drive, Lewistown, Montana to consider the proposed adoption of the above-stated rules.

On May 30, 2012 at 6:00 p.m. the department will hold a public hearing at the Fort Peck Fish Hatchery office located at 277 Highway 117, Fort Peck, Montana to consider the proposed adoption of the above-stated rules.

On May 31, 2012 at 6:00 p.m. the department will hold a public hearing at the Fish, Wildlife and Parks Region 7 office located at 352 I-94 Business Loop, Miles City, Montana to consider the proposed adoption of the above-stated rules.

On May 31, 2012 at 6:00 p.m. the department will hold a public hearing at the Fish, Wildlife and Parks Region 5 office located at 2300 Lake Elmo Drive, Billings, Montana to consider the proposed adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the department no later than May 11, 2012, to advise us of the nature of the accommodation that you need. Please contact Coleen Furthmyre, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; e-mail cfurthmyre@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I IDENTIFIED CONTAMINATED BODIES OF WATER

(1) The department will identify bodies of water within any Department of Agriculture designated Eurasian watermilfoil management area as contaminated with Eurasian watermilfoil.

(2) The department has identified the following bodies of water as contaminated with Eurasian watermilfoil:

- (a) Fort Peck Reservoir;
- (b) Fort Peck Dredge Cut Ponds;
- (c) Jefferson River;
- (d) Missouri River:
 - (i) from Fort Peck Dam to the North Dakota border;
 - (ii) from the confluence of the three forks of the Missouri River to the headwaters of Canyon Ferry Reservoir; and
- (e) Toston Reservoir.

AUTH: 80-7-1007, MCA

IMP: 80-7-1010, MCA

NEW RULE II BAIT RESTRICTIONS WITHIN IDENTIFIED CONTAMINATED BODIES OF WATER (1) The prohibitions of 80-7-1010, MCA apply to the bodies of water identified as contaminated in [NEW RULE I] except:

(a) possession and taking of bait animals, dead or alive, is approved when allowed per fishing regulations;

(b) transportation of aquatic bait animals is approved from contaminated bodies of water in water from a noncontaminated source when allowed per fishing regulations; and

(c) transportation of live fish is approved from contaminated bodies of water in water from a noncontaminated source, when allowed per fishing regulations.

(2) Commercial bait fish seining is prohibited within any identified contaminated body of water listed in [NEW RULE I].

AUTH: 80-7-1007, MCA

IMP: 80-7-1010, MCA

NEW RULE III BODIES OF WATER NOT IDENTIFIED AS CONTAMINATED WITHIN AN EURASIAN WATERMILFOIL MANAGEMENT AREA (1) Any body of water not identified as contaminated within the boundaries of a Department of Agriculture designated Eurasian watermilfoil management area are subject to the regulations outlined in the current published fishing regulations.

Reasonable Necessity: On April 26, 2012, the Department of Agriculture proposed a rule designating two invasive species management areas due to the presence of Eurasian watermilfoil. Montana Code Annotated 80-7-1010 states, "In a body of water designated as an invasive species management area, taking from the water or possessing any bait animal, dead or alive, including but not limited to crayfish, leeches, and minnows, is prohibited unless approved by the department of fish, wildlife, and parks." The Department of Fish, Wildlife and Parks is proposing rules in

order to allow bait within the Department of Agriculture's invasive species management areas and still minimize the further spread of Eurasian watermilfoil.

AUTH: 80-7-1007, MCA
IMP: 80-7-1010, MCA

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 Eileen Ryce, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59620-0701; fax 406-444-4952; e-mail fwpexotics@mt.gov, and must be received no later than June 1, 2012.

5. Jessica Fitzpatrick, or another hearing officer appointed by the department, has been designated to preside over and conduct the hearing.

6. The Department of Fish, Wildlife and Parks maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the commission or department. Persons who wish to have their name added to the list shall make written request which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the commission or department.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on March 29, 2012 by phone message. Copies of the rule notice were electronically sent by e-mail and hard copies mailed on March 29, 2012.

/s/ Joe Maurier
Joe Maurier, Director
Department of Fish, Wildlife and Parks

/s/ Rebecca Jakes Dockter
Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State April 16, 2012

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	AMENDED NOTICE OF
17.55.109 pertaining to incorporation by)	PROPOSED AMENDMENT AND
reference)	EXTENSION OF COMMENT
)	PERIOD
)	
)	(CECRA REMEDIATION)
)	
)	(NO PUBLIC HEARING
)	CONTEMPLATED)

TO: All Concerned Persons

1. On April 12, 2012, the Department of Environmental Quality published MAR Notice No. 17-332 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 678, 2012 Montana Administrative Register, issue number 7. This amended notice is being published because the caption in the original notice stated that the notice was a Notice of Public Hearing on Proposed Amendment. It should have been noticed as a Notice of Proposed Amendment with No Public Hearing Contemplated. No public hearing is being held on the proposed amendment unless the department receives a request for a public hearing from 10 percent or 25 of those persons directly affected by the proposed amendment. The public comment period is being extended to 5:00 p.m., May 24, 2012, to allow interested persons to comment on the proposed amendment, request a hearing, or to do both.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., May 7, 2012, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

3. The 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 and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other

than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; e-mailed to ejohnson@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ John F. North

JOHN F. NORTH

Rule Reviewer

BY: /s/ Richard H. Opper

RICHARD H. OPPER, Director

Certified to the Secretary of State, April 16, 2012.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 18.6.215 pertaining to Outdoor) AMENDMENT
Advertising fees)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On May 26, 2012, the Department of Transportation proposes to amend the above-stated rule.

2. The Department of Transportation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Transportation no later than 5:00 p.m. on May 17, 2012, to advise us of the nature of the accommodation that you need. Please contact Renée Wuertley, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620; telephone (406) 444-9455; fax (406) 444-7206; TDD/Montana Relay Service (406) 444-7696 or (800) 335-7592; or e-mail rwuertley@mt.gov.

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

18.6.215 FEES (1) Fees shall be transmitted by check payable to the Montana Department of Transportation. The department assumes no responsibility for loss in transit of such remittances. Applicants not submitting proper fees will be notified by the department. Fees are nonrefundable.

(2) Fees shall be calculated based on total square footage of sign face or total square footage of sign faces combined when more than one sign face is present on a single structure.

~~(2)~~(3) The fees shall be as follows:

- | | |
|---|---------------------|
| (a) Inspection fee (must accompany the sign permit application) | \$100.00 |
| (b) Initial permit fee for sign size: | |
| (i) 32 sq. ft. or less | \$ 10.00 |
| (ii) 33 sq. ft. to 375 sq. ft. | \$ 50.00 |
| (iii) 376 sq. ft. to 672 sq. ft. | \$ 100.00 |
| (iv) multiple face signs (aggregate of faces totals under 672 sq. ft.) | \$125.00 |
| (v) <u>(iv)</u> multiple face signs (aggregate of <u>sign</u> faces totals over 673 <u>672</u> sq. ft.) | \$ 150.00 |
| (c) Renewal fee (3 year cycle) for sign size: | |
| (i) 32 sq. ft. or less | \$ 15.00 |
| (ii) 33 sq. ft. to 375 sq. ft. | \$ 75.00 |
| (iii) 376 sq. ft. to 672 sq. ft. | \$ 150.00 |

(iv) multiple face signs (aggregate of faces totals under 672 sq. ft.)	\$ 200.00
(v) <u>(iv) multiple face signs (aggregate of <u>sign</u> faces totals over 673 <u>672</u> sq. ft.)</u>	\$ 225.00
(d) Replacement permit plate	\$ 20.00

AUTH: 75-15-121, MCA

IMP: 75-15-122, MCA

REASON: The proposed amendments are necessary to clarify the fees charged for outdoor advertising permits. The current rule language on "multiple face signs" had created confusion in calculation of fees, as the language appears to conflict with other rule language on fee calculations based on total square footage of the sign, including all faces. The proposed amendment will clarify that fees are calculated based on total square footage of a single sign face, or total square footage of all sign faces combined on structures which hold more than one sign face. No increase or decrease in fees is contemplated, and fees will remain the same under the proposed rule amendments.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Patrick Hurley, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620; telephone (406) 444-6068; fax (406) 444-7254; or e-mail phurley@mt.gov, and must be received no later than 5:00 p.m., May 24, 2012.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Pat Hurley at the above address no later than 5:00 p.m., May 24, 2012.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 191 persons based on 1907 permit holders.

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

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

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

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

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

Certified to the Secretary of State April 16, 2012.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
18.8.101, 18.8.207, 18.8.306,	)	AMENDMENT
18.8.411, 18.8.412, 18.8.413,)	
18.8.414, 18.8.415, 18.8.420,	)	NO PUBLIC HEARING
18.8.422, 18.8.426, 18.8.509,	)	CONTEMPLATED
18.8.510A, 18.8.510B, 18.8.511A, 18-)	
8-512, 18.8.517, 18.8.518, 18.8.519,)	
18.8.602, 18.8.604, 18.8.1501,)	
18.8.1502, 18.8.1503, and 18.8.1505,)	
pertaining to motor carrier services)	

TO: All Concerned Persons

1. On May 26, 2012, the Department of Transportation proposes to amend the above-stated rules.

2. The Department of Transportation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Transportation no later than 5:00 p.m. on May 17, 2012, to advise us of the nature of the accommodation that you need. Please contact Dan Kiely, Motor Carrier Services, Department of Transportation, PO Box 4639, Helena, Montana, 59604-4639; telephone (406) 444-7629; fax (406) 444-9263; TDD 444-7696 or (800) 335-7592; or e-mail dkiely@mt.gov.

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

18.8.101 DEFINITIONS The following definitions shall apply throughout this chapter.

~~(1) Holidays are New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day, and Friday preceding any above-named holiday, when holiday is on Saturday, and Monday following any above-named holiday, when holiday is on Sunday.~~

~~(2) Daylight hours means one half hour before sunrise to one half hour after sunset.~~

~~(3) Commercial use means vehicles registered to a business, company, co-op, or corporation and are used in these businesses.~~

~~(4) Personal use means vehicles registered to a private individual for his own personal use.~~

~~(5) Unless otherwise provided for in statute, or these rules, a quarter or calendar quarter shall be a period of three consecutive months ending March 31, June 30, September 30, or December 31.~~

~~(6) "F.O.B. factory list price" and "F.O.B. port-of-entry list price" mean manufacturer's suggested retail price (MSRP), as determined by the Montana Department of Justice under ARM 23.3.802 for light vehicles, motor homes, motorcycles, quadricycles and amphibious vehicles (if they are issued a license plate for highway use). For all vehicles over one ton, "F.O.B. factory list price" and "F.O.B. port-of-entry list price" mean manufacturer's suggested retail price or acquired cost, whichever is less.~~

~~(7) Unless otherwise provided for in statute, or these rules, overhang is the part of a load that extends beyond the rear of a vehicle. Rear overhang is measured from the end of the vehicle or underride protection device.~~

~~(8) A special permit is a written or electronic document which may be issued for either width, height, length or weight in excess of the statutory limits, or a combination of width, height, length and weight. A special permit shall be issued for a nonreducible load only, except when otherwise expressly set forth in the rules. The duration of a special permit may be either a single trip or a term permit.~~

~~(9) "Continuous travel" means unrestricted hours of travel for certain vehicles or loads operating under special permits. Movement is allowed 24 hours a day, seven days a week, including holidays and holiday weekends.~~

~~(10) "Red route" means those highways upon which certain hours of travel may be prohibited for vehicles or loads operating under special permits. The highways are listed on the "red route restrictions" map which is available from the Motor Carrier Services Division, P.O. Box 4639, Helena, MT 59604.~~

~~(11) A convoy is a group of two to five vehicles or vehicle combinations traveling together.~~

~~(12) A telephonic permit is a computer-generated special permit that is issued to a vehicle or load that originates in a location where the permit cannot be transmitted electronically or purchased in person. A vehicle or load that is operating on a telephonic permit is subject to all applicable rules and regulations that apply to special permits.~~

~~(13) Financial stationery permits are hand written special permits issued on preprinted, four-part, consecutively numbered forms.~~

~~(14) A vehicle weight analysis or weight analysis is an approval issued by the department for an overweight vehicle configuration to be issued an overweight permit under the requirements of 61-10-125, MCA, and subchapter 6 of ARM Title 18, chapter 8.~~

~~(15) A route analysis is a route-specific approval issued by the department for an overweight vehicle configuration to be issued an overweight permit under the requirements of 61-10-125, MCA, and subchapter 6 of ARM Title 18, chapter 8.~~

~~(1) "Calendar quarter" means a period of three consecutive months ending March 31, June 30, September 30, or December 31.~~

~~(2) "Commercial motor vehicle" means any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle:~~

~~(a) has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight of 10,001 pounds or more;~~

~~(b) is designed or used to transport more than eight passengers (including the driver) for compensation;~~

(c) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(d) is used in transporting material found by the U.S. Secretary of Transportation to be hazardous under 49 USC 5103 and transported in a quantity requiring placarding under regulation prescribed by the Secretary under 49 CFR, subtitle B, chapter 1, subchapter C.

(3) "Commercial use" means vehicles registered to a business, company, co-op, or corporation which are used in these businesses or a vehicle used in commerce.

(4) "Construction equipment" means any vehicle, machine, or attachment designed or adapted for and used in construction, heavy construction, highway construction, or remodeling work, as defined in 61-10-102, MCA.

(5) "Continuous travel" means unrestricted hours of travel for certain vehicles or loads operating under special permits. Movement is allowed 24 hours per day, seven days per week, including holidays and holiday weekends.

(6) "Convoy" means a group of two to five vehicles or vehicle combinations which would individually require flag vehicles that are permitted to travel together with flag vehicles at the front and rear of the group.

(7) "Daylight hours" means one-half hour before sunrise to one-half hour after sunset as defined by the United States Naval Observatory for the area being travelled in Montana.

(8) "Financial stationery permits" means a hand-written special permit issued on preprinted, four-part, consecutively numbered forms approved by the department.

(9) "F.O.B. factory list price" and "F.O.B. port-of-entry list price" mean manufacturer's suggested retail price (MSRP), as determined by the Montana Department of Justice under ARM 23.3.802 for light vehicles, motor homes, motorcycles, quadricycles, and amphibious vehicles, if they are issued a license plate for highway use. For all vehicles over one ton, "F.O.B. factory list price" and "F.O.B. port-of-entry list price" mean manufacturer's suggested retail price or acquired cost, whichever is less.

(10) "Holiday weekend" means a period of consecutive calendar days adjacent to a holiday, during which travel is prohibited. Holiday weekend time periods include:

(a) a holiday which falls on a Friday or Saturday, prohibiting travel on Friday, Saturday, or Sunday;

(b) a holiday which falls on a Sunday or Monday, prohibiting travel on Saturday, Sunday, or Monday;

(c) a holiday which falls on a Tuesday, Wednesday, or Thursday, prohibiting travel on that day only; or

(d) the Thanksgiving holiday, prohibiting travel on Thursday, Friday, Saturday, and Sunday.

(11) "Holidays" means New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day.

(12) "Overhang" means the part of a load which extends beyond the rear of a vehicle. Rear overhang is measured from the end of the vehicle or underride protection device. Overhang is also defined for a load of raw logs under 61-10-104, MCA.

(13) "Personal use" means a vehicle registered to a private individual for noncommercial use.

(14) "Quarter" means a period of any three consecutive months.

(15) "Red route" means those highways upon which certain hours of travel may be prohibited for vehicles or loads operating under special permits. The highways are listed on the "red route restrictions" map, which is available from the department's Motor Carrier Services Division, P.O. Box 4639, Helena, MT 59604.

(16) "Route analysis" means a route-specific study conducted by the department in connection with an application for an overweight permit of an overweight vehicle configuration to determine the conditions of approval for an application to move overweight vehicles or loads upon a specific route.

(17) "Special permit" means a written or electronic document which may be issued for width, height, length, or weight in excess of the statutory limits, or a combination of these. A special permit shall be issued for a nonreducible load only, except when otherwise expressly set forth in this chapter. The duration of a special permit may be either a single trip or a term permit.

(18) "Telephonic permit" means a computer-generated special permit that is issued to a vehicle or load that originates in a location where the permit cannot be transmitted electronically or purchased in person. A vehicle or load that is operating on a telephonic permit is subject to all applicable statutes and administrative rules which apply to special permits.

(19) "Vehicle weight analysis" or "weight analysis" means a study conducted by the department for an overweight vehicle configuration to determine the conditions of travel for the movement of overweight vehicles or loads.

AUTH: ~~61-3-506, 61-3-716, 61-3-710, 61-10-155, MCA~~

IMP: ~~61-3-501, 61-3-502, 61-3-711, 61-3-712, 61-3-713, 61-3-714, 61-3-715, 61-3-716, 61-3-717, 61-3-718, 61-3-719, 61-3-720, 61-3-721, 61-3-722, 61-3-723, 61-3-724, 61-3-725, 61-3-726, 61-3-727, 61-3-728, 61-3-729, 61-3-730, 61-3-731, 61-3-732, 61-3-733, 61-3-708, 61-3-709, 61-10-107, 61-10-121, 61-10-122, 61-10-123, 61-10-124, 61-10-125, 61-10-201, 61-10-234, MCA~~

REASON: The proposed amendments are necessary to re-organize and alphabetize the definitions for ease of use by the public and the department. The proposed amendments will also provide new or amended definitions for the terms "daylight hours," "commercial use," "construction equipment," "convoy," "holiday weekends," "route analysis," "personal use," "quarter," and "vehicle weight analysis," because those terms are used elsewhere in the rules, and formerly contained confusing language, or no definition of the term caused confusion for the public. The new language will clarify the terms as they are used throughout the rules. The proposed amendments to the authority and implementing sections are necessary to add statutory authorities that provide authorization or are being implemented, as well as delete improper or inappropriate statutory citations.

18.8.207 PAYMENT OF FEES (1) through (4) remain the same.

(5) After issuance of a temporary authority registration (TA), a vehicle is authorized to operate while the annual registration credentials are being processed. All registration fees become due upon issuance of a temporary registration.

AUTH: 61-3-710, 61-3-716, MCA
IMP: 61-3-721, 61-3-729, MCA

REASON: The proposed amendment is necessary to clarify that a temporary authority registration is a valid registration which authorizes a vehicle to operate. The proposed amendment will also clarify that all fees will be due upon its issuance to avoid confusion over allowable operation of vehicles and time frames for payment of fees. The proposed amendment to the authority and implementing citations will clarify that additional statutes are also being implemented in this rule.

18.8.306 FUEL, SIZE, WEIGHT, SAFETY, AND CARGO HAULING AUTHORITY REQUIREMENTS (1) The reciprocity granted does not excuse or relieve any owner or operator of any vehicle granted reciprocity from complying with all fuel laws, driver and vehicle safety requirements, all commercial carrier laws and regulations, and all the size and weight provisions of sections 61-10-101 through 61-10-102, 61-10-103, 61-10-104, 61-10-106, 61-10-107, 61-10-108, 61-10-109, 61-10-110, 61-10-111, 61-10-113, 61-10-121, 61-10-122, 61-10-123, 61-10-124, 61-10-125, 61-10-126, 61-10-127, 61-10-128, 61-10-129, 61-10-130, 61-10-141, 61-10-142, 61-10-143, 61-10-144, 61-10-145, 61-10-146, 61-10-148, and 61-10-154, MCA.

AUTH: 61-3-716, 61-10-154, 61-10-155, MCA
IMP: 61-3-711, 61-3-712, 61-3-713, 61-3-714, 61-3-715, 61-3-716, 61-3-717, 61-3-718, 61-3-719, 61-3-720, 61-3-721, 61-3-722, 61-3-723, 61-3-724, 61-3-725, 61-3-726, 61-3-727, 61-3-728, 61-3-729, 61-3-730, 61-3-731, 61-3-732, 61-3-733, 61-10-124, 61-10-154, MCA

REASON: The proposed amendment is necessary to add a citation to 61-10-154, MCA, as that statute allows MCS to adopt motor carrier safety standards, including enforcement, designation of peace offices, and duties and violation. The proposed amendment will clarify the statutes with which owners and operators must comply after being granted reciprocity. The proposed amendment to the authority and implementing citations will clarify that additional statutes under Title 61, chapter 10, part 1 are also being implemented in this rule.

18.8.411 STATION WAGONS, SUBURBANS, SPORT UTILITY VEHICLES, AND VANS (1) Station wagons, ~~suburbans~~ sport utility vehicles, and vans may be registered as passenger vehicles if used principally for the purpose of transporting persons. Vehicles must be registered as trucks if used only for the transportation of freight or merchandise.

(2) remains the same.

AUTH: ~~This rule is advisory only but may be a correct interpretation of the law.~~
~~IMPLIED, Title 61, chapter 10~~ 61-10-155, MCA

IMP: 61-1-107 61-10-107, 61-10-201, MCA

REASON: The proposed amendment is necessary to update archaic language referring to "suburbans" to the more accurate term "sport utility vehicles." The proposed amendment is also necessary to delete the reference to the advisory nature of the rule. The department has full rulemaking authority under 61-10-155, MCA, to adopt rules to implement Title 61, chapter 10, MCA, thus the rule is not adopted under "implied" rulemaking authority, and the "advisory" designation is not appropriate under 2-4-308, MCA. The proposed amendments to the implementing citations are necessary to correct a typographical error and add the correct citation of "61-10-107, MCA."

18.8.412 SELF-PROPELLED MOTOR HOMES (1) Motor homes used as recreational vehicles may be licensed as passenger cars and when so licensed are not subject to G.V.W. fees. ~~When used commercially, a motor home must be licensed as a truck and pay G.V.W. fees.~~

(2) Motor homes used as commercial motor vehicles must be licensed as a truck and pay G.V.W. fees.

~~AUTH: This rule is advisory only but may be a correct interpretation of the law. Title 61, chapter 10 61-10-155, MCA~~

~~IMP: 61-10-201, MCA~~

REASON: The proposed amendment is necessary to clarify that a motor home used as a commercial motor vehicle must pay G.V.W. fees under the definition of "commercial motor vehicle" which has been added to ARM 18.8.101. The proposed amendment is also necessary to delete the reference to the advisory nature of the rule. The department has full rulemaking authority under 61-10-155, MCA, to adopt rules to implement Title 61, chapter 10, MCA, thus the rule is not adopted under "implied" rulemaking authority, and the "advisory" designation is not appropriate under 2-4-308, MCA.

18.8.413 DEALER PLATES (1) remains the same.

~~AUTH: This rule is advisory only but may be a correct interpretation of the law.~~

~~IMPLIED, 61-10-214 61-10-155, MCA~~

~~IMP: 61-10-214, MCA~~

REASON: The proposed amendment is necessary to delete the reference to the advisory nature of the rule. The department has full rulemaking authority under 61-10-155, MCA, to adopt rules to implement Title 61, chapter 10, MCA, thus the rule is not adopted under "implied" rulemaking authority, and the "advisory" designation is not appropriate under 2-4-308, MCA.

18.8.414 INCREASE IN WEIGHT AND/OR CHANGE OF CLASSIFICATION

(1) through (3) remain the same.

AUTH: 61-10-155, MCA; ~~This rule is advisory only but may be a correct interpretation of the law. IMPLIED, 61-10-201, 61-10-202, 61-10-209, 61-10-233, MCA~~

IMP: 61-10-201, 61-10-202, 61-10-209, 61-10-233, MCA

REASON: The proposed amendment is necessary to delete the reference to the advisory nature of the rule. The department has full rulemaking authority under 61-10-155, MCA, to adopt rules to implement Title 61, chapter 10, MCA, thus the rule is not adopted under "implied" rulemaking authority, and the "advisory" designation is not appropriate under 2-4-308, MCA.

18.8.415 MONTHLY - QUARTERLY G.V.W. FEES (1) through (4) remain the same

(5) Fees paid on an annual basis will be granted a grace period equal to the Montana Vehicle Registration.

(5)(6) The G.V.W. fee receipt will state the issue date, effective date, and expiration date. The receipt is only valid for the time period between the effective date and the expiration date, inclusive of any applicable grace period.

AUTH: 61-10-155, MCA

IMP: 61-10-121, 61-10-122, 61-10-124, 61-10-125, 61-10-141, 61-10-209, MCA

REASON: The proposed amendments are necessary to identify the grace period for an annual registration and make the grace period the same as the registration. The current language was confusing as to when the GVW fees expired. The proposed amendments to the implementing citations are necessary to add citations to all MCA sections being implemented by this rule.

18.8.420 G.V.W. VALIDATING IDENTIFICATION (1) Each truck, truck tractor, trailer, semitrailer or three unit combination with a gross weight in excess of 24,000 pounds (or nonresident paying a G.V.W. fee only) will be issued a G.V.W. ~~cab card receipt~~ showing the expiration of the G.V.W. fees paid. The ~~cab card receipt will be either consist of an owner's registration receipt a Montana Vehicle Registration, G.V.W. Form 3, or a computer-generated G.V.W. fee receipt.~~

AUTH: 61-10-155, MCA; ~~This rule is advisory only but may be a correct interpretation of the law. IMPLIED, 61-10-209, MCA~~

IMP: 61-10-209, MCA

REASON: The proposed amendment is necessary to clarify that all GVW fees are paid on the unit that is pulling the trailer. The proposed amendment is also necessary to clarify the cab card is no longer issued, and has been replaced by a receipt showing the dates, vehicle information, and weights that a unit has paid. The proposed amendment is also necessary to delete the reference to the advisory nature of the rule. The department has full rulemaking authority under 61-10-155, MCA, to adopt rules to implement Title 61, chapter 10, MCA, thus the rule is not

adopted under "implied" rulemaking authority, and the "advisory" designation is not appropriate under 2-4-308, MCA.

18.8.422 TEMPORARY TRIP PERMITS (1) remains the same

(2) Vehicles used by displays or exhibitions (including circuses and carnivals) may be permitted to cover the period of their schedule for a single trip through the state. The last date the vehicle is to be in Montana is shown as the expiration date ~~or on~~ all temporary trip permits issued to displays, exhibitions, carnivals, and circuses. Maximum permit fees must be paid.

(3) through (4)(a) remain the same.

(b) nonreciprocal dealers dealer plates;

(c) through (e) remain the same.

(f) nonresident vehicles traveling with ~~improper~~ incorrect G.V.W. registration or licenses;

(g) all nonresident trucks or trailers not carrying ~~proper~~ appropriate registration ~~cards or papers~~ identification showing state of domicile, including interstate fleet vehicles not licensed by agreements;

(h) through (5)(a) remain the same.

(b) nonresident house trailers towed ~~noncommercially~~ for personal use through Montana properly licensed in another state, the principal use of which is living quarters, ~~temporary or permanent~~;

(c) through (8) remain the same.

AUTH: 61-10-155, MCA. ~~This rule is advisory only but may be a correct interpretation of the law.~~ IMPLIED, 61-10-212, MCA;

IMP: 61-10-124, 61-10-211, 61-10-212, 61-10-213, 61-10-214, MCA

REASON: The proposed amendments are necessary to correct a typographical error. The proposed amendments are also necessary to update archaic language to current references to registration, identification, and licensing by agreement, and to clarify terminology on personal use and deletion of terms on temporary and permanent use, to avoid confusion in use of the rule. The proposed amendment is also necessary to clarify the cab card is no longer issued, and has been replaced by a receipt showing the dates, vehicle information and weights that a unit has paid. The proposed amendment is also necessary to delete the reference to the advisory nature of the rule. The department has full rulemaking authority under 61-10-155, MCA, to adopt rules to implement Title 61, chapter 10, MCA, thus the rule is not adopted under "implied" rulemaking authority, and the "advisory" designation is not appropriate under 2-4-308, MCA. The proposed amendment to the authority and implementing citations will clarify that additional statutes are also being implemented in this rule.

18.8.426 CUSTOM COMBINES (1) Operators of custom combines are issued special permits to cover registration, gross vehicle weight fees, overwidth, overlength and overheight, and fuel requirements. ~~Detailed information may be obtained by contacting the Motor Carrier Services Division, Box 4639, Helena, MT 59604, (406) 444-6130, voice, or (406) 444-7696, TDD. Also, refer to 61-10-124(6)~~

and (7), MCA, and to subchapters 5 and 7 for overdimensional and additional weight permit requirements.

(2) Combines owned and operated by a farmer, used by him on his on the farmer's own lands and incidently incidentally moved over the highways from his own lands to his own lands a field owned or leased by the farmer to another field also owned or leased by the same farmer, or to a point for service or returned from service, are not subject to license or gross weight fees.

(3) remains the same.

(4) Custom combine permits include height up to and including 14 feet 6 inches and width up to and including 15 feet, and length up to and including 95 feet.

(5) Combine headers carried on a trailer may be hauled side by side, however the width may not exceed 12 feet.

AUTH: ~~15-70-314, 61-10-155, MCA; This rule is advisory only but may be a correct interpretation of the law. IMPLIED, 15-24-1001, MCA;~~

IMP: ~~15-24-301, 15-24-1001, 15-70-314~~ 61-10-121, 61-10-122, 61-10-124, 61-10-125, 61-10-141, 61-10-214, MCA

REASON: The proposed amendments are necessary to delete an incorrect statutory reference, and to add "length" to be in line with the term permit requirements. The proposed amendments will also correct typographical errors and make the rule gender neutral. The proposed amendment is also necessary to delete the reference to the advisory nature of the rule. The department has full rulemaking authority under 61-10-155, MCA, to adopt rules to implement Title 61, chapter 10, MCA, thus the rule is not adopted under "implied" rulemaking authority, and the "advisory" designation is not appropriate under 2-4-308, MCA. The proposed amendment to the authority and implementing citations will clarify that additional statutes are also being implemented in this rule.

18.8.509 GENERAL PERMIT RESTRICTIONS (1) through (4) remain the same.

(5) Resident implement dealers may purchase a term special permit for width, length, and height determined by the department, pursuant to the following criteria:

(a) two integrated implements of husbandry may be towed by truck or truck tractor;

(b) towing unit and driver must comply with safety requirements under 49 CFR 383, and 390 through 399;

(c) speed shall not exceed 35 mph; and

(d) travel is restricted to daylight hours.

(6) Extreme caution in the operation of a motor vehicle shall be exercised when hazardous conditions such as those caused by snow, ice, sleet, fog, mist, rain, dust, or smoke adversely affect visibility or traction. Speed shall be reduced when such conditions exist. The driver of any vehicle equipped with vehicular hazard warning lights may activate such lights whenever necessary to warn the operators of following vehicles of the presence of a traffic hazard ahead of the signaling vehicle, or to warn the operators of other vehicles that the signaling vehicle may itself constitute a traffic hazard. When conditions become sufficiently dangerous, the

company or the operator shall discontinue operations, and operations shall not be resumed until the vehicle can be safely operated. No travel is allowed when a route has been placed under ~~emergency travel~~ severe driving conditions as determined by the Department of Transportation. The Department of Transportation road report is available between November 1 and May 1, 24 hours a day by calling 511 or (800) 226-7623 and on the Department of Transportation ~~internet~~ web site at ~~www.mdt.mt.gov~~ www.mdt511.com.

(7) through (12) remain the same.

(13) The Motor Carrier Services Division administrator or its designee may, ~~upon application in writing showing good cause and in the interests of the safety of the traveling public, allow~~ issue special permits ~~to be issued~~ for travel at night, on Saturdays and Sundays, and on holidays in the interests of safety or to minimize disruptions to the traveling public.

AUTH: ~~61-10-129~~, 61-10-155, MCA

IMP: 61-10-121, 61-10-122, 61-10-123, 61-10-124, 61-10-125, MCA

REASON: The proposed amendments are necessary to define the use of equipment that a Montana implement dealer may use on the highway as a unit. The proposed amendments are also necessary to update the wording on the road reporting from "emergency travel" to "severe driving" and to update the road report web site. The proposed amendments to (13) are necessary to delete the current requirement that a separate application be made for travel at night, on weekends or holidays. The department has determined that travel at those designated times may be addressed as a special condition as part of the underlying permit, which may be allowed when a sufficient showing of safety or disruption minimization has been made by the applicant.

18.8.510A REGULATIONS AND EQUIPMENT FOR FLAG VEHICLES (1) A flag vehicle may be any passenger car or two axle truck a minimum of 60 inches wide. The maximum manufacturer's rating for the flag vehicle shall not exceed 2 ~~tens~~ a gross vehicle weight rating of 10,000 pounds to 14,000 pounds. A flag vehicle may not exceed legal limits of size and weight. Trucks used as flag vehicles shall be clearly distinguished from and identifiable as the escort vehicle. A flag vehicle may pull a trailer or carry any item(s) or equipment ~~or load in or on the flag vehicle~~ which:

(a) ~~does not exceed~~ is within legal limits of size and weight; ~~and~~

(b) ~~does not obstruct the~~ allows view of the flashing lights ~~or~~ and signs used by the flag vehicle;

(c) complies with all state traffic laws; and

(d) possesses current registration and valid insurance.

(2) through (4) remain the same.

(5) Flag vehicles must remain within 1,000 feet of the permitted vehicle or load.

AUTH: 61-10-155, MCA; ~~IMPLIED, 61-10-121, 61-10-122, MCA;~~

IMP: ~~61-10-101, 61-10-102, 61-10-103, 61-10-104, 61-10-106, 61-10-107, 61-10-~~

~~108, 61-10-109, 61-10-110, 61-10-113, 61-10-121, 61-10-122, 61-10-123, 61-10-124, 61-10-125, 61-10-126, 61-10-127, 61-10-128, 61-10-129, 61-10-130, 61-10-141, 61-10-142, 61-10-143, 61-10-144, 61-10-145, 61-10-146, 61-10-147, 61-10-148, MCA~~

REASON: The proposed amendments are necessary because MCS has had a number of complaints from the traveling public, the Montana Highway Patrol, and local enforcement officials concerning pilot vehicles crossing the center line and not being properly registered. The proposed amendments will clarify the requirements for flag vehicles for the use of all flag vehicle operators. The proposed amendment is also necessary to delete the reference to the advisory nature of the rule. The department has full rulemaking authority under 61-10-155, MCA, to adopt rules to implement Title 61, chapter 10, MCA, thus the rule is not adopted under "implied" rulemaking authority, and the "advisory" designation is not appropriate under 2-4-308, MCA. The proposed amendment to the authority and implementing citations will clarify which statutes are also being implemented in this rule.

18.8.510B REGULATIONS AND EQUIPMENT FOR VEHICLES OR LOADS EXCEEDING 10 FEET WIDE (1) through (4) remain the same.

(5) Oversize load signs must be removed from the vehicle upon completion of the highway movement which necessitated the signs.

AUTH: 61-10-155, MCA; ~~IMPLIED, 61-10-121, 61-10-122, MCA~~
IMP: 61-10-121, 61-10-122, MCA

REASON: The proposed amendment is necessary because "oversize load" signs are to be used to warn the travelling public to be aware, and when these signs are not removed it causes confusion to the travelling public, defeating the effectiveness and validity of early warning. The proposed amendment is also necessary to delete the reference to the advisory nature of the rule. The department has full rulemaking authority under 61-10-155, MCA, to adopt rules to implement Title 61, chapter 10, MCA, thus the rule is not adopted under "implied" rulemaking authority, and the "advisory" designation is not appropriate under 2-4-308, MCA.

18.8.511A WHEN FLAG VEHICLES ARE REQUIRED (1) remains the same
(2) A rear flag vehicle escort is not required for a vehicle that exceeds 12 feet 6 inches in width, that is hauling or towing an implement of husbandry, construction equipment, or forestry equipment, and that is operating under 61-10-102 (5), MCA, or as authorized by special permit if the vehicle is operating at highway speed or with the flow of traffic.

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

~~(4) Flag vehicles must be within 1,000 feet of the permitted vehicle or load.~~

AUTH: 61-10-155, MCA
IMP: 61-10-121, 61-10-122, 61-10-123, 61-10-124, MCA

REASON: The proposed amendments are necessary to add (2) as required by 2011 legislative session under Chapter 210, HB 251. The proposed amendment to (4) is necessary because this subsection was moved to ARM 18.8.510A.

18.8.512 HEIGHT (1) through (5) remain the same.

(6) A term or single trip special permit may be issued for height of 15 feet or less for baled or loose hay.

AUTH: 61-10-155, MCA; ~~IMPLIED, 61-10-121, 61-10-122, MCA~~

IMP: 61-10-101, ~~61-10-102, 61-10-103, 61-10-104, 61-10-106, 61-10-107, 61-10-108, 61-10-109, 61-10-110, 61-10-113, 61-10-121, 61-10-122, 61-10-123, 61-10-124, 61-10-125, 61-10-126, 61-10-127, 61-10-128, 61-10-129, 61-10-130, 61-10-141, 61-10-142, 61-10-143, 61-10-144, 61-10-145, 61-10-146, 61-10-147, 61-10-148, MCA~~

REASON: The proposed amendments are necessary to clarify dimension limitations. The proposed amendment of the authority and implementing section is necessary to delete improper or inappropriate statutory citations.

18.8.517 SPECIAL VEHICLE COMBINATIONS (1) through (10)(a) remain the same.

~~(b) The driver must have had documented special instruction and training in the operation of special vehicle combinations prior to operating any such combination on a highway.~~

(c) and (d) remain the same, but are renumbered (b) and (c).

~~(e) All drivers of special vehicle combinations operating under a permit shall be certified by the permit holder's safety office. The certification shall demonstrate that the driver has met the written requirements of the Federal Motor Carrier Safety Regulations, 49 CFR parts 390 through 397. The certification shall also show that the driver has successfully completed a company approved road test for each type of combination to be operated. The driver certification forms shall be current and on file in the permit holder's business office as stated on the application and shall be available for inspection during normal business hours.~~

~~(f) All permit applicants are subject to prior approval to ensure that their equipment conforms with the requirements of these regulations and the requirements of the Federal Motor Carrier Safety Regulations, 49 CFR parts 390 through 397. In addition, all equipment operated under the permit by the permit holder is subject to periodic field inspection to ensure continued compliance with equipment requirements.~~

(11) and (12) remain the same.

(13) No overlength permit may be issued to a company which does not have a documented, established and aggressive safety compliance program, including a driver training and certification program.

(14) and (15) remain the same.

(16) The original permit shall be carried in the truck or truck-tractor of the special vehicle combination operating under the permit, and shall be displayed to any peace officer, employee of the Department of Transportation, or Montana

Highway Patrol, or Public Service Commission upon request.
(17) through (20) remain the same.

AUTH: 61-10-129, 61-10-155, MCA
IMP: 61-10-124, MCA

REASON: The proposed amendments are necessary to eliminate duplication of federal requirements. The proposed amendment will also delete a reference to the Public Service Commission, as the PSC no longer conducts this program nor maintains inspectors.

18.8.518 SPECIAL VEHICLE COMBINATION DRIVER CERTIFICATION

(1) through (2) remain the same.

~~(3) The operating company will provide the driver with a certification card, which the driver shall carry at all times when operating a special vehicle combination. The certification card shall be issued at the completion of the annual certification. The certification card shall be valid from January 1 through December 31 of each year. This certification card shall be available for display by the driver when requested by any employee of the Department of Transportation or the Montana Highway Patrol.~~

~~(a) Blank certification cards are available from the M.C.S. Division of the Department of Transportation.~~

AUTH: 61-10-129, 61-10-155, MCA
IMP: 61-10-124, MCA

REASON: The proposed amendments are necessary to eliminate duplication of federal requirements found at 23 CFR 380.107.

18.8.519 WRECKERS AND/OR TOW VEHICLE REQUIREMENTS

(1) remains the same.

(1)(a) When proceeding to an emergency, the wrecker or tow vehicle which exceeds the weight limits set forth in 61-10-141, MCA, must enter an open weigh station except if the emergency creates highway blockage and/or serious threat to life and property. If this condition exists, the wrecker or tow vehicle must have top lights flashing and may pass by the open weigh station.

(b) through (e)(iv) remain the same.

(v) All flag vehicles, lights, and signing regulations found at ARM 18.8.510A, 18.8.510B, and 18.8.511A apply to wreckers and/or tow vehicles when responding to or returning from an emergency.

AUTH: 61-10-155, MCA
IMP: 61-10-121, 61-10-122, 61-10-124, 61-10-125, 61-10-141, MCA

REASON: The proposed amendments are necessary to ensure (1)(a) is uniform with (1)(d). The proposed amendment to (1)(e)(v) is also necessary for safety and clarification as to when flag vehicle, lights, and signs are required.

18.8.602 CONDITIONS IMPOSED FOR MAXIMUM WEIGHT (1) and (2) remain the same.

(3) On noninterstate highways, unless specifically noted on the special permit, loads may maintain a maximum speed of 55 mph or the posted speed limit, whichever is less. ~~when~~ When speed restrictions over structures are imposed, two flag vehicles or one flag vehicle and one flag person, equipped with high visibility clothing and hand-signaling devices, are required. For purposes of this section, high visibility clothing shall be a flagger's vest, shirt, or jacket, orange, yellow, strong yellow-green or fluorescent versions of these colors. Hand signaling devices shall be a stop/slow paddle 18 inches wide and octagonal in shape, with letters at least 6 inches high. The background of the stop face shall be red with white letters and border.

(4) through (6) remain the same.

AUTH: 61-10-155, MCA

IMP: 61-10-121, 61-10-122, 61-10-124, 61-10-125, 61-10-141, MCA

REASON: The proposed amendments are necessary to correct grammatical errors. Statutes are also being implemented in this rule.

18.8.604 VEHICLE WEIGHT ANALYSIS AND ROUTE ANALYSIS (1) A Upon request, a vehicle weight analysis as defined in subchapter 6 of this chapter is issued shall be conducted by the department for a specific vehicle configuration, axle spacings, axle weights, and gross weight. to determine the conditions of travel for the movement of overweight vehicles or loads.

(a) The analysis is transferable only to an identical vehicle configuration.

(b) If there is any change in the vehicle configuration, axle spacings, axle weights, or gross weight, the analysis is invalid and a new vehicle weight analysis must be requested ~~by the permittee.~~

(c) When obtaining a an overweight permit for a vehicle operated under a vehicle analysis, it is the responsibility of the permittee to provide a copy of the analysis for reference previously issued vehicle weight analysis, or to request an initial analysis.

(d) The permittee must carry a copy of the vehicle weight analysis in the assigned vehicle and be able to produce it for inspection by an officer.

(2) A Upon request, a route analysis as defined in subchapter 6 of this chapter is shall be conducted by the department when necessary as a one-time-only approval for a specific vehicle configuration, axle spacings, axle weights, gross weight, and route of travel to determine the conditions of travel for the movement of overweight vehicles or loads upon a specific route.

(a) When obtaining an overweight permit, A route analysis must be requested by the permittee each time there is a change of axle weights, vehicle configuration, or a new route of travel is required.

(b) Only the Helena MCS office is authorized to issue permits for a vehicle configuration operating under the conditions of a route analysis.

AUTH: 61-10-155, MCA
IMP: 61-10-121, 61-10-125, MCA

REASON: The proposed amendments are necessary to clarify definitions of and uses of vehicle and route analyses in connection with an overweight permit application. The current language does not differentiate between the analyses and the permit themselves, thus the amendments will explain the analyses are necessary as a required element of an application. The proposed amendments will also clarify the appropriate transferability of the vehicle weight analysis, versus the nontransferability of the route analysis. The proposed amendments are also necessary to correct errors to the definition references within the rule.

18.8.1501 MOTOR CARRIER SAFETY DEFINITIONS (1) through (2)(a)(ii) remain the same.

(iii) is designed or used to transport ~~nine or~~ more than eight passengers, including the driver, for compensation; or
(iv) through (j) remain the same.

AUTH: 61-10-155, MCA
IMP: ~~44-1-1005~~, 61-10-141, 61-10-154, MCA

REASON: The proposed amendment is necessary to clarify the definition of commercial motor vehicle for consistency with other administrative rules. The proposed amendment to the implementing citations will clarify which statutes are being implemented in this rule.

18.8.1502 FEDERAL MOTOR CARRIER SAFETY RULES AND STATE MODIFICATIONS (1) Any commercial motor vehicle or motor carrier subject to regulation by the department under 61-10-154, MCA, shall comply with and the department adopts by reference the following portions of the Federal Motor Carrier Safety Regulations of the U.S. Department of Transportation, subject to the provisions of (2). The regulations adopted are 49 CFR part 373, 49 CFR part 375, 49 CFR part ~~parts~~ 377 through 379, 49 CFR part 382, 49 CFR part 383, 49 CFR part 385, 49 CFR part 387, 49 CFR parts 390 through 399, and Appendix G to subchapter B of chapter III, Title 49 of the Code of Federal Regulations, as updated through ~~January 1, 2010~~ April 1, 2012. Copies of the regulations may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(2) remains the same.

AUTH: 61-10-155, MCA
IMP: ~~44-1-1005~~, 61-10-141, 61-10-154, MCA

REASON: The proposed amendments are necessary to update the federal CFR citations to add 49 CFR part 383, to ensure the ability to enforce federal regulations. The proposed amendments are also necessary to update to the most current 2012 Code of Federal Regulations. The proposed amendment to the authority and

implementing citations will clarify which statutes are also being implemented in this rule.

18.8.1503 TRANSPORTATION OF HAZARDOUS MATERIALS (1) A commercial motor vehicle or motor carrier subject to regulation by the department under 61-10-154, MCA, shall comply with and the department adopts by reference the following federal regulations of the U.S. Department of Transportation concerning the transportation of hazardous materials. The regulations adopted by reference are 49 CFR part 107, 49 CFR part 171, 49 CFR part 172, 49 CFR part 173, 49 CFR part 177, 49 CFR part 178, and 49 CFR part 180. The regulations adopted may be found in the Code of Federal Regulations, Title 49, chapter I, subchapters B and C, as updated through ~~January 1, 2010~~ April 1, 2012. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

AUTH: 61-10-155, MCA
IMP: 61-10-154, MCA

REASON: The proposed amendments are necessary to update the federal CFR citation to the most current 2012 Code of Federal Regulations.

18.8.1505 SAFETY INSPECTION PROGRAM: PURPOSE AND OUT-OF-SERVICE CRITERIA (1) remains the same.

(2) In addition to the federal regulations adopted in ARM 18.8.1502, the safety inspection program will follow Commercial Vehicle Safety Alliance (CVSA), North American ~~Uniform~~ Standard Out-of-Service Criteria (April 1, ~~2010~~ 2012), incorporated by reference. A copy of the North American ~~Uniform~~ Standard Out-of-Service Criteria may be obtained from the Commercial Vehicle Safety Alliance, 1101 17th Street, NW, Suite 803, Washington, DC 20036.

(3) remains the same.

AUTH: 61-10-155, MCA
IMP: ~~44-1-1005~~, 61-10-154, MCA

REASON: The proposed amendments are necessary to update to the most current CVSA North American Standard "Out-of-Service" criteria, as well as to use the correct terminology. The proposed amendment to the authority and implementing citations will clarify which statutes are also being implemented in this rule.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Dan Kiely, Motor Carrier Services, Department of Transportation, PO Box 4639, Helena, Montana, 59604-4639; telephone (406) 444-7629; fax (406) 444-9263; or e-mail dkiely@mt.gov, or Jeff Steeger, Motor Carrier Services, Department of Transportation, PO Box 4639, Helena, Montana, 59604-4639; telephone (406) 444-4207; fax (406) 444-7681; or e-mail jsteeger@mt.gov, and must be received no later than 5:00 p.m., May 24, 2012.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Dan Kiely or Jeff Steeger at the above address no later than 5:00 p.m., May 24, 2012.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 9,307 persons based on the number of permits issued in the 2011 calendar year.

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

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor for amendments to ARM 18.8.511A was contacted by U.S. mail on February 3, 2012.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

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

Certified to the Secretary of State April 16, 2012.

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

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULES I through VI pertaining to stay) PROPOSED ADOPTION
at work/return to work for workers')
compensation)

TO: All Concerned Persons

1. On May 18, 2012, at 1:00 p.m., the Department of Labor and Industry will hold a public hearing in the basement auditorium of the DPHHS Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Labor and Industry no later than 5:00 p.m. on May 14, 2012, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Department of Labor and Industry, Attn: Jason Swant, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-1748; fax (406) 444-4140; TDD (406) 444-5549; or e-mail jswant@mt.gov .

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The proposed administrative rules implement the stay at work/return to work (SAW/RTW) program, which was established by the 2011 Montana Legislature by Chapter 167, L. 2011 (House Bill 334).

The department's Employment Relations Division involved stakeholder groups in the drafting of the proposed new rules. Representatives of workers' compensation insurers; self-insured employers; the Montana State Fund; vocational rehabilitation providers; and advocates for injured workers participated in the stakeholder rule review process. The stakeholders expressed general agreement with the proposed rules.

The department considered but rejected various rule provisions to facilitate seamless delivery of SAW/RTW assistance following the initiation of services by the department. Because the insurer must accept financial responsibility for all SAW/RTW assistance after the insurer accepts liability for the injured worker's workers' compensation claim, the department determined that the most expedient action is for the department to immediate transfer responsibility for the provision of assistance to the insurer. Pursuant to § 39-71-1006(5), MCA, the insurer may designate the same rehabilitation provider, who had been assigned to the injured

worker by the department, to continue to provide services to the injured worker at the insurer's expense.

The proposed new rules clarify the obligations of the department and insurers in assisting injured workers to stay at work after a work-related injury or to return to work as soon as possible with the time-of-injury employer following an injury or occupational disease. Transitional employment is defined by the proposed new rules to include alternate work duties and reduced work hours.

SAW/RTW assistance provided by the department will be supported through an assessment upon all Montana employers. The proposed new rules clarify that the department will assign a vocational rehabilitation counselor to deliver SAW/RTW services when the insurer cannot be identified or declines to provide assistance prior to the insurer accepting liability for the injured worker's workers' compensation claim. The proposed new rules outline the financial assistance available to employers from the department to accomplish workplace modifications or purchase equipment, for the purpose of allowing an injured worker to remain in or return to transitional employment with the time-of-injury employer.

The proposed new rules set out the department's system for tracking assistance outcomes for injured workers and require insurers to provide consistent outcome reporting information to the department. The department plans to conduct annual evaluations of the efficacy of the SAW/RTW program, and consistent and timely outcome reporting is critical.

The department proposes to make the proposed rule adoptions effective as of July 1, 2012, subject to input from comments received. The department reserves the right to make the adoptions effective at a later date, or not at all. The department reserves the right to adopt or amend the proposed new rules identified in this notice.

After adoption of the rules, any updates or changes to these rules will be undertaken by the department according to the requirements of the Montana Administrative Procedure Act.

This general statement of reasonable necessity applies to all of the rules proposed for adoption and will be supplemented as necessary for any given rule.

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

NEW RULE I DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession, as defined in 39-71-116, MCA.

(2) "Injured worker" means an individual who has filed a claim for a workers' compensation injury or occupational disease. The term "injured worker" includes an

individual who meets the definition of a disabled worker set forth by 39-71-1011, MCA.

(3) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3, as defined in 39-71-116, MCA.

(4) "Medical status form" means the department reporting form completed by an injured worker's treating physician or designee, which documents an injured worker's medically necessary work restrictions and work abilities.

(5) "Outcome report form" means the department reporting form completed by an insurer or vocational rehabilitation counselor, which documents the results for the injured worker of SAW/RTW assistance.

(6) "Request" means a request for SAW/RTW assistance by letter, email, or telephone call to the department or insurer. A request must include, at a minimum, the name of the injured worker, the requestor's name and requestor's telephone number. A note in a medical record does not constitute a request.

(7) "SAW/RTW" means stay at work/return to work.

(8) "Time-of-injury employer" means the employer under whose employment a worker was injured or developed an occupational disease.

(9) "Transitional employment" means work for the injured worker with the time-of-injury employer offered by the employer for a temporary period of time, and may include a reduction in hours, workplace modifications, and alternative job duties.

(10) "Vocational rehabilitation counselor" means a rehabilitation provider who possesses current certification from the Commission on Rehabilitation Counselor Certification, as defined in 39-71-1011, MCA.

AUTH: 39-71-203, 39-71-1051, MCA

IMP: 39-71-105, 39-71-116, 39-71-1011, 39-71-1036, MCA

NEW RULE II RESPONSIBILITIES OF THE INSURER (1) Each insurer shall adopt a SAW/RTW policy and submit a current, complete copy of the policy to the department. The insurer shall provide the department with all SAW/RTW policy updates a minimum of ten business days in advance of implementation of policy change.

(2) The insurer shall designate a single point of contact to coordinate all department requests for SAW/RTW assistance for injured workers and shall provide the department with written notice of the contact person's name, telephone number, email address, and mailing address. When contact information changes, the insurer shall update the department a minimum of ten business days in advance of the change.

(3) When a request for SAW/RTW assistance is made directly to the insurer prior to the insurer's acceptance of liability for a claim, the insurer may elect to provide SAW/RTW assistance to the injured worker or it may refer the injured worker to the department for assistance.

(4) When the insurer declines to provide SAW/RTW assistance or denies liability for an injured worker's claim, the insurer shall notify the injured worker and the department in writing within three business days of a request for assistance.

(5) After the department has initiated SAW/RTW assistance to an injured worker, the insurer shall notify the department in writing within three business days of the insurer's acceptance of liability for an injured worker's claim.

(6) For notice purposes, the department's contact information is:

(a) via email, dlsawrtw@mt.gov;

(b) via fax machine, (406)-444-4140;

(c) via U.S. mail, SAW/RTW Assistance Program, P.O. Box 8011, Helena, MT 59604-8011; or

(d) via the street address is Employment Relations Division, Beck Building, 1805 Prospect Avenue, Helena, Montana.

(7) Notice sent by U.S. mail must be postmarked within the three business days required by this rule.

(8) The insurer shall report the outcome of SAW/RTW assistance to the department, using the department outcome reporting form, within 30 business days of the earliest of:

(a) the return to work start date;

(b) the termination of SAW/RTW services; or

(c) the injured worker's attainment of maximum medical improvement.

AUTH: 39-71-203, 39-71-1051, MCA

IMP: 39-71-105, 39-71-1014, 39-71-1031, 39-71-1042, MCA

REASON: Proposed New Rule II sets forth strict time limits within which notice must be provided by the insurer to the injured worker and department to make certain communication between the insurer, injured worker and department occurs in a timely manner. The time requirements of proposed New Rule II further the statutory directive that the worker return to work as soon as possible after an injury or an occupational disease occurs. Because the at-risk insurer is legally bound to provide SAW/RTW assistance only after accepting liability for a workers' compensation claim, the proposed rule clarifies that the insurer may refer an injured worker to the department for assistance. The requirement that all insurers adopt written SAW/RTW policies and share those policies with the department is for the purpose of ensuring consistency in assistance delivery. The single point of contact for insurer communication with the department is for the purpose of facilitating and expediting the flow of information. When the at-risk insurer declines to provide SAW/RTW assistance to an injured worker prior to the insurer's acceptance of liability for the claim, the department must be informed quickly because the injured worker then is entitled to assistance provided by the department.

NEW RULE III DUTIES OF THE DEPARTMENT (1) An injured worker is eligible for SAW/RTW assistance upon receipt by the department of a request for assistance from the injured worker, employer or health care provider.

(2) When the department is unable to identify the insurer within three business days of receiving a request for SAW/RTW assistance, the department shall provide assistance to the injured worker. When the department identifies the at-risk insurer after the department has initiated assistance, the department shall continue to provide SAW/RTW services to the injured worker when the insurer declines to

provide SAW/RTW assistance or fails to respond to department notice of the initiation of services. The department shall provide services until it:

(a) terminates SAW/RTW services to the injured worker upon notice of insurer denial of liability for the claim;

(b) terminates SAW/RTW services to the injured worker upon exhaustion of the maximum allowed provider fees, as provided in [NEW RULE IV]; or

(c) transfers responsibility for the delivery of SAW/RTW assistance to the insurer upon notice of the insurer's acceptance of liability for the claim.

(3) When the department provides SAW/RTW assistance, the department shall assign a vocational rehabilitation counselor to each eligible injured worker to provide services which may include, but are not limited to, the following:

(a) personal contact with injured worker to assess the worker's commitment and ability to stay at or return to work;

(b) identification of barriers to the injured worker staying at or returning to work;

(c) review of the injured worker's medical status form to ensure worker's understanding of work abilities and restrictions;

(d) personal contact with injured worker's employer to establish employer's ability to provide transitional employment that meets injured worker's abilities, as outlined by the medical status form;

(e) facilitation of communication between injured worker and employer regarding offer and acceptance of transitional employment;

(f) communication with injured worker's treating physician or designee regarding the assessment and approval of transitional employment when approval is not explicitly provided by medical status form;

(g) verification that duties assigned by employer to injured worker during transitional employment conform with abilities outlined by the medical status form;

(h) identification of concerns of the injured worker and employer and problem-solving throughout the process of establishing transitional employment; and

(i) monitoring injured worker's readiness and ability to return to time of injury job and providing appropriate interventions as needed.

(4) The department shall provide written notice to the injured worker, employer and insurer, if identified, when a vocational rehabilitation counselor is assigned by the department to provide SAW/RTW services to an injured worker. The notice shall be mailed within three business days of the assignment of a vocational rehabilitation counselor.

(5) The department shall provide written notice to the injured worker, employer and insurer of the completion of department-provided SAW/RTW assistance within three business days of the completion of services.

AUTH: 39-71-203, 39-71-1051, MCA

IMP: 39-71-105, 39-71-1031, 39-71-1041, 39-71-1042, 39-71-1043, MCA

REASON: The department must coordinate the provision of SAW/RTW assistance with the insurer. Proposed New Rule III delineates who may request the assistance. The proposed new rule establishes that the department will provide SAW/RTW assistance to an injured worker when the at-risk insurer is not identified,

has failed to respond to department notice, or has not accepted liability for a claim and declines to provide services within the time frame of three business days following a request for assistance. The rule also clarifies that the insurer is responsible for providing all SAW/RTW assistance as soon as the insurer accepts liability for an injured worker's workers' compensation claim. The department is responsible for communicating with the injured worker, employer, and insurer within specific, limited time frames to facilitate the statutory goal of returning the injured worker to work as soon as possible.

NEW RULE IV PAYMENT SCHEDULE FOR DEPARTMENT-PROVIDED SAW/RTW ASSISTANCE

(1) The department shall pay vocational rehabilitation counselors for SAW/RTW services in accordance with the following fee schedule:

(a) a maximum of \$90 per hour for services provided, billed in 1/10 hour increments;

(b) travel time of four (4) hours or less at one-half the hourly rate;

(c) travel time over four (4) hours at two-thirds the hourly rate; and

(d) mileage, lodging and meals at the State of Montana per diem rate established pursuant to Title 2, chapter 18, part 5, MCA.

(2) The department shall pay a maximum of \$2,000.00 per claim to a certified vocational rehabilitation counselor for SAW/RTW services, not including mileage, lodging and meals.

(3) When the department provides the assistance, the department may pay up to \$2,000.00 to assist an employer in modifying the workplace or purchasing equipment required for the employer to provide transitional employment. Any such equipment or workplace modifications become the property of the employer. To apply for financial assistance, the employer must submit a written application to the department that includes, at a minimum, the following:

(a) a written recommendation from the department-designated vocational rehabilitation counselor, which specifically describes the required workplace modification or equipment;

(b) the estimated cost of the recommended workplace modification; and

(c) the estimated cost of the recommended equipment.

(4) The department may deny an employer's application for financial assistance when the department determines the application is incomplete or the request for assistance is unreasonable. The department will notify the employer as to whether the application is accepted or rejected, and the reasons for the action.

AUTH: 39-71-203, 39-71-1049, 39-71-1051, MCA

IMP: 39-71-105, 39-71-1042, 39-71-1049, MCA

REASON: The Legislature granted rulemaking authority to the department in § 39-71-1049 (3), MCA, to establish a fee schedule for SAW/RTW assistance. Proposed New Rule IV clarifies that this fee schedule only applies to SAW/RTW assistance provided by the department. The department's research showed that vocation rehabilitation counselors in Montana charge from \$80 to \$120 per hour. The department has determined that the insurer with the most insured employers in the state currently pays rehabilitation providers at the rate of \$85/hour. Based upon

that rate, the department believes that a maximum rate of \$90/hour is reasonable. Proposed New Rule IV recognizes that returning an injured worker to work may require specialized equipment or workplace modifications and outlines the availability of financial assistance for employers to implement the rehabilitation provider's SAW/RTW recommendations.

NEW RULE V VOCATIONAL REHABILITATION COUNSELOR POOL FOR DEPARTMENT-PROVIDED SAW/RTW ASSISTANCE (1) The department shall obtain qualified vocational rehabilitation counselors under contract to provide SAW/RTW services to injured workers.

(2) When the department provides SAW/RTW assistance, the department shall assign a vocational rehabilitation counselor to provide services to each eligible injured worker.

(3) The department shall select an appropriate vocational rehabilitation counselor for each injured worker, using the following criteria:

- (a) geographical proximity to the injured worker's residence;
- (b) ability to accept and promptly provide services to an injured worker; and
- (c) specialized expertise and pertinent experience with the type of injury or challenges to returning to work faced by the injured worker.

(4) The vocational rehabilitation counselor shall notify the department of the services provided, the progress toward transitional employment and assistance outcomes, as specified by the contract with the department.

(5) The department shall periodically request proposals from vocational rehabilitation counselors and execute contracts for services with qualified applicants.

AUTH: 39-71-203, 39-71-1051, MCA
IMP: 39-71-105, 39-71-1043, MCA

REASON: In order for the department to provide SAW/RTW assistance through a rehabilitation provider, the department must comply with state procurement regulations. Proposed New Rule V explains that the department will engage in a request-for-proposal process to establish contracts with vocational rehabilitation counselors. Proposed New Rule V describes the process the department will use to assign a rehabilitation provider to each injured worker who requests assistance and outlines the reporting responsibilities of the vocational rehabilitation counselors to facilitate the gathering of statistical information regarding the efficacy of SAW/RTW assistance for department analysis.

NEW RULE VI APPLICABILITY (1) SAW/RTW assistance, pursuant to this subchapter, is applicable to workers who experience a work-related injury or occupational disease on or after July 1, 2012.

AUTH: 39-71-203, 39-71-1051, MCA
IMP: 39-71-105, 39-71-1011, 39-71-1031, 39-71-1041, 39-71-1042, 39-71-1043, 39-71-1049, MCA

REASON: The 2011 Montana Legislature by Sections 15-23, Chapter 167, L. 2011 (House Bill 334) established the effective date of the statutory framework for the stay at work/return to work program as July 1, 2012. The department concludes that there is reasonable necessity to adopt New Rule VI in order to make it clear to injured workers that the SAW/RTW provisions apply only to injuries or occupational disease cases arising on or after the effective date of those statutes.

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: Employment Relations Division, Department of Labor and Industry, Attn: Jason Swant, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-1748; fax (406) 444-4140; TDD (406) 444-5549; or e-mail jswant@mt.gov . and must be received no later than 5:00 p.m., May 25, 2012.

5. The Hearings Bureau of the Department of Labor and Industry has been designated to preside over and conduct this hearing.

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

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program or areas of law 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 Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockett Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor notice requirements of § 2-4-302, MCA, do apply and have been fulfilled. Representative Scott Reichner, the primary sponsor of House Bill 334, was contacted by Diana Ferriter, Employment Relations Division bureau chief, on March 19, 2012, and provided notice that work was beginning on the substantive content and wording of the proposed new rules presented in this notice.

Ms. Ferriter contacted Representative Reichner again on April 4, 2012, and shared electronic copies of the draft administrative rules prior to publication. All comments received from Representative Reichner were taken into account in drafting the proposed rules.

/s/ Mark Cadwallader
Mark Cadwallader
Alternate Rule Reviewer

/s/ Keith Kelly
Keith Kelly
Commissioner
Department of Labor and Industry

Certified to the Secretary of State April 16, 2012.

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

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 37.108.507 pertaining to) AMENDMENT
healthcare effectiveness data and)
information set (HEDIS) measures) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On May 26, 2012, the Department of Public Health and Human Services proposes to amend the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on May 16, 2012, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.108.507 COMPONENTS OF QUALITY ASSESSMENT ACTIVITIES

(1) Annually, the health carrier shall evaluate its quality assessment activities by using the following HEDIS year ~~2011~~ 2012 measures:

- (a) childhood immunization;
- (b) breast cancer screening;
- (c) cervical cancer screening;
- (d) comprehensive diabetes care; and
- (e) HEDIS/Consumer Assessment of Health Plan Survey (CAHPS) for adults.

(2) The health carrier shall record organizational components that affect accessibility, availability, comprehensiveness, and continuity of care, including:

- (a) referrals;
- (b) case management;
- (c) discharge planning;
- (d) appointment scheduling and waiting periods for all types of health care services;
- (e) second opinions, as applicable;
- (f) prior authorizations, as applicable;
- (g) provider reimbursement arrangements that contain financial incentives that may affect the care provided; and

(h) other systems, procedures, or administrative requirements used by the health carrier that affect the delivery of care.

(3) The health carrier may meet the requirements in (2) by submitting information to the department regarding network adequacy as specified in ARM 37.108.201, et seq., as long as the information is consistent with what is required in (2).

(4) The department adopts and incorporates by reference the HEDIS year ~~2011~~ 2012 measures for the categories listed in (1)(a) through (e). The HEDIS year ~~2011~~ 2012 measures are developed by the National Committee for Quality Assurance and provide a standardized mechanism for measuring and comparing the quality of services offered by managed care health plans. Copies of HEDIS ~~2011~~ 2012 measures are available from the National Committee for Quality Assurance, 1100 13th St. NW, Suite 1000, Washington, D.C. 20005 or on the internet at www.ncqa.org.

AUTH: 33-36-105, MCA

IMP: 33-36-105, 33-36-302, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.108.507 to update the healthcare effectiveness data and information set (HEDIS).

The Managed Care Plan Network Adequacy and Quality Assurance Act (Title 33, chapter 36, MCA) establishes standards for health carriers offering managed care plans and for the implementation of quality assurance standards in administrative rules. ARM 37.108.501 through 521, were adopted in 2001 to establish mechanisms for the department to evaluate quality assurance activities of health carriers providing managed care plans in Montana. ARM 37.108.507 requires health carriers to report their quality assessment activities to the department using HEDIS measures, nationally utilized measures that are updated annually. Since the HEDIS standards change somewhat every year, the rule must also be updated annually to reflect the current year's measures and ensure that national comparisons are possible, since the other states will also be using the same updated measures.

The option of not updating the HEDIS measure was considered and rejected because these are national quality measures which allow comparison among health plans. If the measures are not kept current, this function is lost.

The changes from adopted 2011 measures to the proposed 2012 measures are quoted below:

Childhood Immunization Status

No changes to this measure.

Breast Cancer Screening

Deleted ICD-9 Diagnosis codes V76.11, V76.12 from Table BCS-A.

Replaced "Modifier .50" with "Modifier 50" in Table BCS-B.

Cervical Cancer Screening

Deleted ICD-9 Diagnosis codes V72.32, V76.2 from Table CCS-A.

Comprehensive Diabetes Care

Added LOINC code 62388-4 to Table CDC-D.

Deleted CPT codes 90920, 90921, 90924, 90925 from Table CDC-K.

Deleted HCPCS codes G0314-G0319, G0322, G0323, G0326, G0327 from Table CDC-K.

Deleted ICD-9 Diagnosis code V56 from Tables CDC-K and CDC-P.

Added codes for CHF to Table CDC-P (the measure previously referred to Table RCA-A, which has been deleted).

Added CPT codes 92134, 92227, 92228 to Table CDC-G.

Deleted ICD-9 Diagnosis code V72.0 from Table CDC-G.

Added azilsartan to "Angiotensin II inhibitors" description in Table CDC-L.

Added aliskiren-hydrochlorothiazide-amlodipine to the "Antihypertensive combinations" description in Table CDC-L.

Clarified BP Control criteria for the Administrative Specification.

Clarified that members who meet the Optional Exclusion criteria must be excluded from the denominator for all rates, if optional exclusions are applied.

Clarified reduction of sample size in the Hybrid Specification.

Clarified that "Documentation of a renal transplant" meets criteria for the Medical attention for nephropathy indicator.

Relative Resource Use for People With Diabetes

Revised Service Frequency Calculations (including addition of "Other condition-specific categories").

Moved required exclusion tables to the Guidelines for Relative Resource Use and renamed them.

Incorporated the HCC-RRU Risk Adjustment methodology.

Added new "Diagnostic Laboratory" and "Imaging Services" categories.

Revised the Data Elements for Reporting tables.

HEDIS/Consumer Assessment of Health Plan Survey (CAHPS) for Adults

This measure is collected using survey methodology. Detailed specifications and summary of changes are contained in HEDIS 2012, Volume 3: Specifications for Survey Measures.

Corrections, policy changes and clarifications to HEDIS 2012, Volume 2, Technical Specifications

Updated Random Number Table for Measures Using the Hybrid Method.

Childhood Immunization Status

Table CIS-B

Delete "Progressive neurologic disorder, including infantile spasm, uncontrolled epilepsy" from Table CIS-B.

Comprehensive Diabetes Care

Table CDC-J, add LOINC codes 60678-0, 63474-1.

BP Control <140/80 mm Hg

In the second sentence at the top of the page, replace "≤140/80 mm Hg" with "<140/80 mm Hg."

BP Control <140/80 mm Hg and BP Control <140/90 mm Hg

Replace the text (including the three bullets) below Table CDC-N with the following. For both BP control indicators, the BP must be in conjunction with an outpatient visit code or a nonacute inpatient visit code from Table CDC-C."

5. The department intends the proposed rule amendments to be applied retroactively to January 1, 2012. There is no negative impact to the affected health insurance companies by applying the rule amendment retroactively.

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kenneth Mordan, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on May 24, 2012. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

7. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kenneth Mordan at the above address no later than 5:00 p.m., May 24, 2012.

8. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be one based on the two health insurance providers affected by this rule change.

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

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

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

/s/ Kurt R. Moser
Rule Reviewer

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

Certified to the Secretary of State April 16, 2012.

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 IV, amendment of ARM 37.90.401, 37.90.402, 37.90.408, 37.90.410, 37.90.425, 37.90.428, 37.90.442, and 37.90.460 pertaining to home and community-based services for adults with severe disabling mental illness) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On May 16, 2012, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in 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 Department of Public Health and Human Services no later than 5:00 p.m. on May 9, 2011, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: DEFINITIONS

(1) "Adult residential care" means a residential habilitation option for persons residing in an adult foster home, group home, or an assisted living facility.

(2) "Case management" means a service that provides the planning for, arranging for, implementation of, and monitoring of the delivery of services available to an person through the program.

(3) "Community transitions services" means nonrecurring set-up expenses for persons who are transitioning from an institutional or other provider-operated living arrangement to a living arrangement in a private residence where the person is directly responsible for his or her own living expenses.

(4) "Habilitation" means intervention services designed to assist a person to acquire, retain, and improve the self-help, socialization, and adaptive skills necessary to reside successfully at home and in the community.

(5) "Health and wellness" means services that assist persons in acquiring, retaining, and improving self-help, socialization, and adaptive skills to reside successfully in the community.

(6) "Homemaker chore" means services provided for persons who are unable to manage their own homes, or when the person normally responsible for homemaking is absent.

(7) "Illness management and recovery (IMR)" means an evidence-based program to provide services consisting of personalized strategies for managing mental illness and achieving personal goals.

(8) "Nonmedical transportation" means transportation through common carrier or private vehicle for access to social or other nonmedical activities.

(9) "Pain and symptom management" means a service of traditional and nontraditional methods of pain management.

(10) "Personal assistant services (PAS)" is defined at 53-6-145, MCA and includes attendant PAS and socialization/supervision PAS.

(11) "Plan of care" means a written plan of supports and interventions to guide the provision of services based on an assessment of the status and needs of a consumer.

(12) "Respite care" means the provision of supportive care to a consumer to relieve those unpaid persons normally caring for the consumer.

(13) "Serious occurrence" means a significant event which affects the health, welfare, and safety of a person served in home and community-based services. The department has established a system of reporting and monitoring serious incidents that involve persons served by the program in order to identify, manage, and mitigate overall risk to the person.

(14) "Severe disabling mental illness" is defined in ARM 37.86.3503.

(15) "Specially trained attendant care" means an option under personal assistance that is the provision of supportive services to a person residing in their own residence.

(16) "Substance use related disorder services" means provision of counseling to a person with a substance use related disorder by a licensed addiction counselor or appropriate licensed professional.

(17) "Supported living" means the provision of comprehensive supportive services to a person residing in an individual residence or in a group living situation.

(18) "Wellness, recovery and action plan (WRAP)" means an individualized plan developed by a person to manage their mental illness. This is a tool to guide persons through the process of identifying and understanding their personal wellness resources.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

NEW RULE II HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: COMMUNITY TRANSITION SERVICES REQUIREMENTS

(1) Community transition services means nonrecurring set-up expenses for persons who are transitioning from an institutional or other provider-operated living arrangement to a living arrangement in a private

residence where the person is directly responsible for his or her own living expenses.

(2) Allowable expenses are those necessary to enable a person to establish a basic household and may include:

(a) customary security deposits that are required to obtain a lease on an apartment or home;

(b) essential household furnishings required, including furniture, window coverings, food preparation items, and bed/bath linens;

(c) moving expenses;

(d) customary setup fees or deposits for utility or service access, including telephone, electricity, heating, and water; and

(e) activities to assess need for, arrange for, or procure resources.

(3) Community transition services do not include monthly rental or mortgage expenses, food, and diversion/recreational expenses.

(4) Refunded security deposits must be paid to the department.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

NEW RULE III HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: PAIN AND SYMPTOM

MANAGEMENT REQUIREMENTS (1) Pain and symptom management is defined as a service that allows the provision of traditional and nontraditional methods of pain reduction and/or management.

(2) Treatments are limited to:

(a) acupuncture;

(b) reflexology;

(c) massage therapy;

(d) craniosacral therapy;

(e) mind-body therapies such as hypnosis and biofeedback;

(f) pain mitigation counseling/coaching;

(g) chiropractic therapy; and

(h) nursing services by a nurse specializing in pain and symptom management.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

NEW RULE IV HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: HEALTH AND

WELLNESS REQUIREMENTS (1) Health and wellness is defined as services that assist consumers in acquiring, retaining and improving self-help, socialization, and adaptive skills to reside successfully in the community.

(2) The service includes adaptive health, wellness, and therapeutic recreational services such as:

(a) hydrotherapy;

(b) living well with a disability; and

- (c) access to fitness and exercise facilities.

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

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

37.90.401 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: FEDERAL AUTHORIZATION AND STATE ADMINISTRATION (1) through (3) remain the same.

(4) The state has received federal approval to waive statewide coverage in the provision of program services. Program services may only be delivered to ~~recipients~~ persons in the following service areas for which federal approval of coverage has been received:

(a) remains the same.

(b) Cascade County Region, inclusive of the counties of Cascade, Blaine, Chouteau, Glacier, Hill, Liberty, Pondera, Teton, ~~and Toole,~~ and Phillips;

(c) Butte-Silver Bow County Region, inclusive of the counties of Butte-Silver Bow, Beaverhead, Deer Lodge, Granite, Powell, and Jefferson; ~~and~~

(d) Missoula County;

(e) Lewis and Clark County; and

(f) Flathead County Region, inclusive of the counties of Flathead, Lake, Sanders, and Lincoln.

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

IMP: ~~53-2-401,~~ 53-6-402, MCA

37.90.402 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: THE PROVISION OF SERVICES

(1) remains the same.

(2) The department may determine the particular services of the program to make available to ~~a recipient~~ a person based on, but not limited to, the following criteria:

(a) the ~~recipient's~~ person's need for a service generally and specifically;

(b) the availability of a specific service through the program and any ancillary service necessary to meet the ~~recipient's~~ person's needs;

(c) the availability otherwise of alternative public and private resources and services to meet the ~~recipient's~~ person's need for the service;

(d) the ~~recipient's~~ person's risk of significant harm or of death if not in receipt of the service;

(e) through (4) remain the same.

(5) The following services, as defined in these rules, may be provided through the program:

(a) through (o) remain the same.

(p) ~~chemical dependency counseling~~ substance use related disorder services;

- (q) through (t) remain the same.
- (u) community transition services;
- (v) health and wellness; and
- (w) pain and management.

(6) Monies available through the program may not be expended on the following:

- (a) room and board; ~~and~~
- (b) special education and related services as defined at 20 USC 1401(16) and (17); and
- (c) vocational rehabilitation.

(7) The program is considered the payor of last resort. A program service is not available to a ~~recipient person~~ if that type of service is otherwise available to the ~~recipient person~~ from another source.

AUTH: 53-2-201, 53-6-402, MCA
IMP: ~~53-2-401~~, 53-6-402, MCA

37.90.408 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: REIMBURSEMENT (1) remains the same.

- (2) The following services are reimbursed as provided in (3):
 - (a) through (i) remain the same.
 - ~~(j) chemical dependency counseling~~ substance use related disorder services;
 - (k) through (o) remain the same.
 - (p) illness management and recovery services; ~~and~~
 - (q) Wellness Recovery Action Plan (WRAP);_i
 - (r) community transition service;
 - (s) health and wellness; and
 - (t) pain and symptom management.

(3) through (8) remain the same.
(9) No copayment is imposed on services provided through the program but ~~recipients consumers~~ are responsible for copayment on other services reimbursed with Medicaid monies.

(10) Reimbursement is not available for the provision of services to other members of a ~~recipient's~~ person's household or family unless specifically provided for in these rules.

AUTH: 53-2-201, 53-6-402, MCA
IMP: ~~53-2-401~~, 53-6-402, MCA

37.90.410 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: ELIGIBILITY AND SELECTION

- (1) through (3)(f) remain the same.
- (g) resides in one of the following service areas for which federal approval of coverage has been received:
 - (i) remains the same.

- (ii) Cascade County Region, inclusive of the counties of Cascade, Blaine, Chouteau, Glacier, Hill, Liberty, Pondera, Teton, ~~and Toole, and Phillips;~~
 - (iii) Butte-Silver Bow County Region, inclusive of the counties of Butte-Silver Bow, Beaverhead, Deer Lodge, Granite, Powell, and Jefferson; ~~and~~
 - (iv) Missoula County;
 - (v) Lewis and Clark County; and
 - (vi) Flathead County Region, inclusive of the counties of Flathead, Lake, Sanders, and Lincoln.
- (4) through (6) remain the same.
- (7) A recipient person may be removed from the program by the department. Bases for removal from the program include, but are not limited to the following:
- (a) through (h) remain the same.

AUTH: 53-2-201, 53-6-402, MCA
IMP: ~~53-2-401~~, 53-6-402, MCA

37.90.425 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: CASE MANAGEMENT, REQUIREMENTS

- (1) Case management is the planning for, arranging for, implementation of, and monitoring of the delivery of services available through the program to a recipient person.
- (2) Case management services include:
 - (a) developing a plan of care for a recipient person;
 - (b) monitoring and managing a plan of care for a recipient person;
 - (c) remains the same.
 - (d) maximizing a recipient's person's efficient use of services and community resources such as family members, church members, and friends;
 - (e) facilitating interaction among people working with a recipient person;
 - (f) and (g) remain the same.
 - (3) A case management team must consist of:
 - (a) a registered nurse ~~currently~~ with experience ~~serving~~ on a case management team serving persons ~~who are recipients~~ through the a program of home and community-based services for the elderly and persons with physical disabilities, or severe disabling mental illness; and
 - (b) a social worker ~~currently employed by a licensed mental health center~~ with two consecutive years experience providing case management services to adults with severe disabling mental illness.
 - (4) remains the same.

AUTH: 53-2-201, 53-6-402, MCA
IMP: ~~53-2-401~~, 53-6-402, MCA

37.90.428 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: ADULT RESIDENTIAL CARE, REQUIREMENTS

- (1) Adult residential care is the ~~provision of supportive services to a recipient~~ a residential habilitation option for a person residing in an adult foster home, a residential hospice, ~~or a personal care facility~~ an assisted living facility.

(2) remains the same.

(3) Adult residential care must provide for 24 hour on site response staff to meet scheduled or unpredictable needs of ~~recipients~~ consumers and to provide supervision of ~~recipients~~ consumers for safety and security.

(4) A ~~recipient~~ consumer of adult residential care may not receive the following services through the program:

(a) through (e) remain the same.

(5) Adult residential care facilities must be licensed by the state of Montana.

(6) A provider of adult residential care must report serious occurrences, as defined in [New Rule I], to the department.

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

IMP: 53-2-401, 53-6-402, MCA

37.90.442 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: CHEMICAL DEPENDENCY COUNSELING SUBSTANCE-RELATED DISORDERS SERVICES, REQUIREMENTS

~~(1) Chemical dependency counseling~~ Substance-related disorder service is the provision of counseling to a ~~recipient~~ person with a substance abuse problem by a ~~certified chemical dependency~~ licensed addiction counselor or appropriately licensed professional.

~~(2) Chemical dependency counseling~~ Substance-related services may be provided on an individual or group basis.

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

IMP: 53-2-401, 53-6-402, MCA

37.90.460 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: ILLNESS MANAGEMENT AND RECOVERY SERVICES, REQUIREMENTS

~~(1) Illness management and recovery (IMR) program consists of a series of weekly sessions where licensed mental health practitioners~~ department-approved trainers provide services consisting of personalized strategies for managing mental illness and achieving personal goals to individuals who have experienced the symptoms of schizophrenia, bipolar disorder, and major depression to individuals who have experienced the symptoms of schizophrenia, bipolar disorder, or major depression.

(2) remains the same.

(3) ~~Mental health practitioners~~ Department-approved trainers work collaboratively with individuals by offering a variety of information, strategies, and skills for use to manage mental illness, achieve personal goals, and further their own recovery.

~~(4) Illness management and recovery has been identified as an evidence-based practice by the Substance Abuse and Mental Health Services Administration.~~

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

IMP: 53-2-401, 53-6-402, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to adopt New Rules I through IV and amend ARM 37.90.401, 37.90.402, 37.90.408, 37.90.410, 37.90.425, 37.90.428, 37.90.442, and 37.90.460 pertaining to the Home and Community Based Services (HCBS) Waiver for Adults with Severe Disabling Mental Illness. New Rules I through IV include a definition section and additional services. The proposed amendments are necessary changes because they will improve the services provided, resolve issues that have been proven previously problematic, and enhance the recovery of persons served.

The proposed amendments to the existing rules add additional counties, provide additional services, change requirements for social workers and "Illness Management Recovery" trainers, change the name "recipient" to "person" for consistency across the rules and to recognize that individuals are active participants in their care, and change the name of chemical dependency counseling services.

New Rule I

The Administrative Rules of Montana Title 37, chapter 90, subchapter 4, "The Home and Community Based Services for Adults with Severe Disabling Mental Illness" does not have a definition section. New Rule I defines the terms used in subchapter 4.

New Rules II - IV

Section 53-6-402 (9), MCA states HCBS may include case management, homemaker services, home health aide services; personal care services; adult day health services; habilitation services; respite care services; and other cost-effective services appropriate for maintaining the health and well-being of persons and to avoid institutionalization of persons. The proposed new rule pertaining to Community Transition, Symptom and Pain Management, and Health and Wellness services meet this statutory criteria.

Community Transition Services are nonrecurring set-up expenses for individuals transitioning from the Montana State Hospital, Montana Mental Health Nursing Care Center, or a long-term care facility. Many of the residents of the facilities have lost their home and household goods during their stay and these situations have proven to be a barrier to discharge to the community. The Community Transition Services would allow persons who are ready for discharge to obtain appropriate housing and household goods.

The Pain and Symptom Management services, proposed in New Rule III, will allow for traditional and nontraditional methods of pain reduction and/or management. People on the Waiver are prescribed psychotropic medication. Often the combinations of pain medications interfere in the health and well-being of the

individuals. There is a danger of over-medication and over-sedation. The services listed in New Rule III provide alternatives to pain relief.

The Health and Wellness requirements in New Rule IV help with physical and social well-being. Historically, persons with severe disabling mental illness live on an average 25 years less than the average person. These individuals suffer from diabetes, COPD, heart disease, and obesity to name a few of the medical issues. New Rule IV's services will assist individuals in acquiring and maintaining activities that will support recovery and healthy lifestyles in the community.

ARM 37.90.401 and 37.90.410

The proposed amendment to these rules add Phillips, Lewis and Clark, Flathead, Lake, Lincoln, and Sanders counties as approved service areas for the waiver. The department has sufficient appropriation to expand to Lewis and Clark County. Lewis and Clark County was chosen because of the proximity of staff to oversee the waiver site. Flathead, Lake, Sanders, and Lincoln counties were selected to receive waiver services when resources are available because they are considered the next population areas in need of waiver services. Phillips County was selected to provide availability of waiver services for the entire Fort Belknap Reservation rather than part of the reservation.

ARM 37.90.402 and 37.90.408

The proposed amendments add new services to the waiver program. These include Community Transition, Pain and Symptom Management, and Health and Wellness services. Chemical dependency counseling is renamed as "substance-related disorder" services. The American Psychiatric Association's Diagnostic and Statistical Manual V and International Classification of Diseases (ICD) are adopting the term "substance-related disorder" to include other substances and abuse issues that are not necessarily dependency matters.

The Vocational rehabilitation services should have been included in the list of nonallowable expenses in ARM 37.90.402. This was an oversight in the original rule. The Centers for Medicare and Medicaid do not allow HCBS waivers to cover prevocational and supported employment services when these services are already provided for in the Rehabilitation Act.

ARM 37.90.425

The proposed amendment requires that nurses on the case management team have experience rather than being currently employed by waiver services. The change will help in providing more nurses for HCBS. Social workers on the case management teams are required to have two years of experience providing case management services to persons with severe disabling mental illness, but they are not required to be employed by a mental health center. In the past, the salary of social workers employed by the mental health center has been significantly lower

than their peers in the waiver program. In addition, there has been little supervision of social workers since the supervisor is from the mental health center and is not focused on the waiver program. The proposed rule changes give the waiver programs flexibility in hiring a social worker and allow for better supervision.

ARM 37.90.428

The proposed amendment includes adult residential care as an option under residential habilitation. This amendment allows an adult residential care facility to hold a bed and be reimbursed if the resident is hospitalized on a short-term basis or visiting family. Currently, if an individual wants to visit a family member or is hospitalized, the adult residential care facility is not reimbursed for those days. As a result, the adult residential care facility may discharge the person and not have a bed available for the individual's return. The proposed amendment requires that adult residential care facilities be licensed by the state under ARM 37.40.1435, and these facilities must report serious occurrences, as defined in New Rule I, to the department.

ARM 37.90.442

The proposed amendment changes the service called chemical dependency counseling to substance-related disorder services. This change encompasses not only dependency but also abuse of substances. The proposed amendment changes the provider name from "certified chemical dependency counselor" to "licensed addiction counselor" and adds other appropriate licensed practitioners who can address treatment for substance-related disorders within the scope of their license. Chemical dependency counselors, according to their license, are licensed addiction counselors. Adding the other licensed practitioners allows for additional flexibility in obtaining an appropriate practitioner.

ARM 37.90.460

The department is proposing to amend ARM 37.90.460 to change the provider for Illness Management Recovery services from a licensed mental health practitioner to a department-approved trainer. The department has provided training to persons who can provide Illness Management Recovery services without the need for professional mental health licenses. Persons performing these services are not required to be licensed mental health practitioners.

FISCAL IMPACT

No fiscal impact. The proposed changes are included in the 2011 Montana legislative appropriations.

6. The department intends the proposed rule changes to be applied effective July 1, 2012.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., May 24, 2012.

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

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

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

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

/s/ Michelle Maltese
Rule Reviewer

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

Certified to the Secretary of State April 16, 2012.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.85.212 and 37.86.105) PROPOSED AMENDMENT
pertaining to resource based relative)
value scale (RBRVS))

TO: All Concerned Persons

1. On May 16, 2012, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on May 9, 2012, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.85.212 RESOURCE BASED RELATIVE VALUE SCALE (RBRVS) REIMBURSEMENT FOR SPECIFIED PROVIDER TYPES (1) For purposes of this rule, the following definitions apply:

(a) remains the same.

(b) "Conversion factor" means a dollar amount by which the relative value units, or the anesthesia units for anesthesia services, are multiplied in order to establish the RBRVS fee for a service. There are four conversion factor categories:

(i) physician services, which applies to the following health care professionals listed in (2): physicians, mid-level practitioners, podiatrists, public health clinics, independent diagnostic testing facilities (IDTF), qualified Medicare beneficiary (QMB) and early and periodic screening, diagnostic and treatment (EPSDT) chiropractors, laboratory and x-ray services, family planning clinics, and dentists providing medical services. The conversion factor for physician services for state fiscal year ~~2012~~ 2013 is ~~\$33.23~~ \$31.86;

(ii) allied services, which applies to the following health care professionals listed in (2): physical therapists, occupational therapists, speech therapists, optometrists, opticians, audiologists, and school-based services. The conversion factor for allied services for state fiscal year ~~2012~~ 2013 is ~~\$23.24~~ \$23.11;

(iii) mental health services, which applies to the following health care professionals listed in (2): licensed psychologists, licensed clinical social workers, and licensed professional counselors. The conversion factor for mental health services for state fiscal year ~~2012~~ 2013 is ~~\$22.23~~ \$22.80; and

(iv) anesthesia services, which applies to anesthesia services. The conversion factor for anesthesia services for state fiscal year ~~2012~~ 2013 is \$27.55.

(c) through (h) remain the same.

(i) "Resource based relative value scale (RBRVS)" means the most current version of the Medicare resource based relative value scale contained in the Medicare Physician Fee Schedule adopted by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services and published at ~~75 Federal Register 228, 73504 (November 29, 2010)~~ and ~~corrected at 76 Federal Register 7, 1670 (January 11, 2011)~~ 76 Federal Register 228, 73026 (November 28, 2011), effective January 1, ~~2011~~ 2012 which is adopted and incorporated by reference. A copy of the Medicare Physician Fee Schedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. The RBRVS reflects RVUs for estimates of the actual effort and expense involved in providing different health care services.

(j) through (4) remain the same.

(5) For state fiscal year ~~2012~~ 2013, policy adjustors will be used to accomplish the targeted funding allocations. The department's list of services affected by policy adjustors through ~~September 1, 2012~~ July 1, 2013, is adopted and incorporated by reference. The list is available from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(6) through (8)(a) remain the same.

(b) For state fiscal year ~~2012~~ 2013, the by report rate is ~~47%~~ 46% of the provider's usual and customary charges.

(9) through (11) remain the same.

(12) Subject to the provisions of (12)(a), when billed with a modifier, payment for procedures established under the provisions of (7) is a percentage of the rate established for the procedures.

(a) The methodology to determine the specific percent for each modifier is as follows:

(i) and (ii) remain the same.

(iii) The department's list of the specific percents for the modifiers used by Medicaid as amended through ~~August 1, 2012~~ July 1, 2013 is adopted and incorporated by reference. A copy of the list is available on request from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(iv) through (14) remain the same.

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

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-125, MCA

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

(2) Reimbursement for physician services, except as otherwise provided in this rule, is the lower of:

- (a) the provider's usual and customary charges (billed charges); or
- (b) the department's fee schedule maintained in accordance with the methodologies described in ARM 37.85.212; ~~or.~~

(3) Reimbursement for services of a psychiatrist, except as otherwise provided in this rule, is the lower of:

- (a) remains the same.
- (b) to address problems of access to mental health services, subject to funding, mental health services performed by a psychiatrist are reimbursed up to 125% of the reimbursement for physicians provided in accordance with the methodologies described in ARM 37.85.212.

(4) Reimbursement to physicians for physician-administered drugs which are billed under HCPCS "J" and "Q" codes is made according to the department's fee schedule or the provider's usual and customary charge, whichever is lower. The department's fee schedule is updated at least annually based upon:

- (a) the Medicare Average Sale Price (ASP) set at 42 CFR 414.904 (~~2011~~ 2012) if there is an ASP fee;
- (b) through (6) remain the same.

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

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.85.212 and 37.86.105. This rule implements Montana Medicaid's resource based relative value scale (RBRVS) reimbursement method for specified provider types. Montana Medicaid uses the RBRVS rate system to calculate the fees Montana Medicaid pays to 20 types of health care professionals.

The Montana Medicaid program is administered by the department to provide health care to Montana's qualified low income and disabled residents (hereinafter "Medicaid clients"). It is a public assistance program paid for with state and federal funds appropriated to pay health care providers (hereinafter "Medicaid providers") for the covered medical services they deliver to Medicaid clients. The Legislature delegates authority to the department to set the reimbursement rates Montana pays Medicaid providers for Medicaid client's covered services. See 53-6-106(8) and 53-5-113, MCA.

The RBRVS system is used nationwide by most health plans, including Medicare and Medicaid. The relative value unit component of the RBRVS system is revised annually by the Centers for Medicare and Medicaid Services (CMS) and the American Medical Association. The department annually proposes to amend ARM 37.85.212(1)(i) to adopt current relative value units (RVUs). An RVU is a numerical

value assigned to each medical procedure. RVUs are based on physician work, practice expense, and malpractice insurance expenses and express the relative effort and expense expended to provide one procedure compared with another. RVUs are added for new procedures and the RVUs of particular procedures may increase or decrease from year to year.

The department annually calculates conversion factors for allied services, mental health services, and anesthesia services. These conversion factors are calculated by dividing the Montana Legislature's appropriation for Medicaid client's health care during the upcoming SFY by the estimated total units of health care, expressed as total RVUs paid, to be provided during the upcoming SFY. The resulting quotient is the conversion factor. The RVU for a procedure multiplied by the conversion factor is the fee paid for the procedure. The conversion factor for licensed physicians is set by 53-6-124 through 53-6-127, MCA and the fees paid are funded by legislative appropriations.

The fee paid for a procedure by a health plan is calculated by multiplying that procedure's RVU by the health plan's conversion factor. Montana Medicaid's conversion factors for physicians' services, allied service, mental health services, and anesthesia services are published in ARM 37.85.212(b)(i) through (iv). The department for SFY 2013 is proposing to maintain fees at SFY 2012 levels in aggregate. Therefore, the proposed conversion factor amounts for SFY 2013 are: physician services (\$31.86); allied services (\$23.11), mental health services (\$22.80), and anesthesia services (\$27.55).

ARM 37.85.212

ARM 37.85.212(7) through (14) address rates for services without RVUs. The amendment to ARM 37.85.212(8) sets the by-report rate for SFY 2013 that applies if no RVU is specified in the Medicare Physician Fee Schedule or if an alternative rate exists. The by-report percentage is determined by dividing the amount that is reimbursed for services by the amount billed for the services. For SFY 2013 the Department is proposing to amend the by-report percentage to 46%.

The department will continue the process of modeling fees for SFY 2013. This process will be complete prior to the rule hearing date May 16, 2012. It may be necessary to change the rates for conversion factors and/or the by-report percentage as a result of this modeling process. If so, these changes will be reflected in the department's testimony at the public hearing and second notice.

ARM 37.86.105

ARM 37.86.105(3) addresses the reimbursement of psychiatrists when performing mental health services. Clarification to this rule is needed to insure that it is clear that psychiatrists do not receive enhanced reimbursement when performing nonmental health services.

In ARM 37.86.105(2) a small grammatical correction was made by placing the word "or" in the correct sequence.

ARM 37.86.105 (4) addresses the reimbursement of physician administered drugs. The department follows the reimbursement methodology used by Medicare for many physician administered drugs. The amendment to ARM 37.86.105(4) allows the department to update the fees for these drugs by using the most current information provided by Medicare.

The department at ARM 37.85.212 and ARM 37.86.105 reflect the requirements of 17-7-140, MCA. All fees paid to Medicaid providers for services to Medicaid clients during SFY 2013 are a result of funds appropriated by the 62nd Montana Legislative Session and, except as limited by 17-7-140(2), MCA, those appropriations are subject to the Governor's authority, pursuant to 17-7-140, MCA, to reduce agency spending when the appropriated revenue appears to exceed the collected revenue.

Rate increases for SFY 2013 were not included in the department's budget and there is no appropriation for rate increases by the 62nd legislature.

The conversion factors and fees established by this rule are set in compliance with Title 53 and Title 17. The department interprets 53-6-124 MCA and 53-6-125, MCA to mean that fees for services performed by physicians using the RBRVS reimbursement system will in aggregate remain at a minimum at the SFY 2010 levels. This assumes that as a result of changes to the relative value units, fees for some services will increase and some will decrease. However, in aggregate, increases will offset decreases and the department will comply with the requirements of 53-6-124, MCA.

The department also considered the impact the fees will have on efficiency, economy, quality of care, and access and concluded that the fees are still sufficient to meet the requirements of 42 USC 1396a(a)(30(A)).

Fiscal Impact

The estimated cumulative fiscal impact of these rules is:

	<u>Total Cost</u>	<u>State General Fund</u>	<u>Federal Match</u>
SFY 2013	\$0	\$0	\$0

This rule amendment is estimated to impact 13,400 Medicaid providers and 108,000 Medicaid clients.

5. The department intends the proposed rule changes to be applied effective July 1, 2012.

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., May 24, 2012.

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

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

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

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State April 16, 2012.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.86.1501, 37.86.1502, and) PROPOSED AMENDMENT
37.86.1506 pertaining to home)
infusion therapy program revisions)

TO: All Concerned Persons

1. On May 16, 2012, at 9:30 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 Department of Public Health and Human Services no later than 5:00 p.m. on May 9, 2012, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.86.1501 HOME INFUSION THERAPY SERVICES, DEFINITIONS In ARM 37.86.1501, 37.86.1502, 37.86.1505, and 37.86.1506, the following definitions apply:

(1) "Agency staff services" means all services provided by the home infusion therapy agency's staff, as provided in ARM 37.106.2405, including all professional and nonprofessional employed and contracted individuals.

(a) through (h) remain the same.

(2) "Home infusion therapy services" means a comprehensive treatment program for the preparation and administration of parenteral medications or ~~parenteral or enteral~~ nutritional services to a recipient who is not receiving infusion therapy as a hospital inpatient or outpatient. Home infusion therapy services include all pharmacist professional services, all agency staff services and all associated medical equipment and supplies. Home infusion therapy services do not include ~~professional nursing services, professional physician services, or drugs.~~ Drugs are covered under the pharmacy outpatient program.

(3) "Home Nursing Services for Infusion/Specialty Drug Administration" means high-tech registered nurse (RN) services provided by an RN with special education, training and expertise in home administration of drugs via infusion, home

administration of specialty drugs, or home nursing management of disease state and care management programs. Typical services include:

- (a) evaluation and assessment;
- (b) education and training for the patient or caregiver;
- (c) inspection and consultation of aseptic home environment;
- (d) catheter insertion; and
- (e) patient assessment.

~~(3)~~(4) "Pharmacist professional services" include:

- (a) through (d) remain the same.
- (e) delivery, pick up, and disposal of equipment, supplies and/or, drugs; and
- (f) 24-hour on call status; and

~~(g) (5) any other services of the pharmacist related to the recipient's home infusion therapy services. Pharmacist professional services do not include costs, fees or charges for the drugs that are compounded or administered. Other home infusion therapy services include services as provided in ARM 37.106.2411 and the procedure codes included in the department's Home Infusion Therapy Fee Schedule.~~

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

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

37.86.1502 HOME INFUSION THERAPY SERVICES, PROVIDER REQUIREMENTS (1) remains the same.

(2) Home infusion therapy service providers, as a condition of participation in the Montana Medicaid program, must:

(a) maintain a current home infusion therapy agency license issued by the department's quality assurance division, and meet the standards set forth in ARM 37.106.2422, or, if the provider is serving recipients outside the state of Montana, maintain a current license in the equivalent category under the laws of the state in which the services are provided; and

(b) remains the same.

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

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

37.86.1506 HOME INFUSION THERAPY SERVICES, REIMBURSEMENT

(1) Subject to the requirements of these rules, the Montana Medicaid program will pay for home infusion therapy services on a fee basis, as specified in the department's home infusion therapy services fee schedule. The department adopts and incorporates by reference the Home Infusion Therapy Services Fee Schedule dated ~~August 2014~~ July 1, 2012. A copy of the department's fee schedule is posted at the Montana Medicaid provider web site at <http://medicaidprovider.hhs.mt.gov>. A copy of the Home Infusion Therapy Services Fee Schedule may also be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. The specified fees are on a per day or a per dose basis as

specified in the fee schedule. The fees are bundled fees which cover all home infusion therapy services as defined in ARM 37.86.1501.

(2) and (3) remain the same.

~~(4) Subject to (4)(c), professional nursing services provided as part of a recipient's home infusion therapy program are separately billable and will be reimbursed in the following manner:~~

~~(a) nursing services provided by a home health agency will be reimbursed under the Home Health Services program as provided in ARM 37.40.701, 37.40.702, and 37.40.705;~~

~~(b) nursing services provided by licensed nurses employed by the home infusion therapy agency will be reimbursed to the agency under the methodology specified in ARM 37.86.2207; and~~

~~(c) professional nursing services are not separately billable when the home infusion therapy program is provided in a nursing facility.~~

(4) Nursing services provided by licensed nurses employed by the home infusion therapy agency will be reimbursed to the agency as specified in the Home Infusion Therapy Fee Schedule. Home nursing services for infusion / specialty drug administration are not billable when the home infusion therapy program is provided in a nursing facility.

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

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.86.1501, 37.86.1502, and 37.86.11506. The proposed amendments are necessary because home infusion therapy providers are required to follow two different sets of nursing rules and fee schedules causing administrative confusion. Consolidating home nursing services for infusion/specialty drug administration into the Home Infusion Therapy Program provides an efficient mode to manage the infusion therapy and associated nursing services. This consolidation will reduce duplicative efforts and will focus on providing a continuum of care for the department's clients.

The proposed rule amendments will better manage nursing services provided to Medicaid clients receiving home infusion therapy. The proposed amendments define nursing services, reimbursement policy, and align the program with the Quality Assurance Division's (QAD) Administrative Rules for Home Infusion Therapy.

ARM 37.86.1501

This rule directs the reader to the appropriate Quality Assurance Division rules to clarify the agency's personnel duties, descriptions and allowed services. Additionally, the rule change will allow for professional nursing services to be managed under the program and directs the reader to the outpatient pharmacy

program for coverage of drugs. Because professional nursing services will be allowed under the program, it is necessary to include the nurse's responsibilities. Due to the technical complexity of home infusion therapy the reader is directed to the department's home infusion fee schedule for clarity of covered services.

ARM 37.86.1502

The department is amending this rule by referencing QAD's ARM 37.106.2422 in order to provide a more comprehensive description of expectations for providers.

ARM 37.86.1506

The department is amending this rule by removing references that professional nursing services are separately billable. Home infusion nursing services will be reimbursed according to the department's home infusion therapy fee schedule. The amendment also clarifies that home nursing services for infusion/specialty drug administration are not billable in a nursing facility.

FISCAL IMPACT

There should not be a fiscal impact to any programs caused by the proposed rule revisions.

5. The department intends the proposed rule changes to be applied effective July 1, 2012.

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., May 24, 2012.

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

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

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of

State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State April 16, 2012.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.87.733, 37.87.809,) PROPOSED AMENDMENT
37.87.901, and 37.87.2233 pertaining)
to updating the Children's Mental)
Health Bureau (CMHB) fee schedule)

TO: All Concerned Persons

1. On May 17, 2012, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on May 9, 2012, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.87.733 MENTAL HEALTH CENTER SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (SED), REIMBURSEMENT (1) Medicaid reimbursement for mental health center services shall be the ~~lowest~~ lesser of:

(a) the provider's actual (submitted) charge for the service; or

(b) the rate established in the department's Medicaid ~~Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule~~ fee schedule, as adopted in ARM 37.87.901.

(2) For day treatment services, the department will not reimburse a mental health center provider for more than one fee per treatment day per youth. This does not apply to mental health professional services to the extent such services are separately billed in accordance with these rules or targeted case management services for youth with serious emotional disturbance.

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

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

37.87.809 TARGETED CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, REIMBURSEMENT (1) remains the same.

(2) The department will pay providers of targeted case management services for youth with SED the lesser of:

(a) remains the same.

(b) ~~the amount specified~~ the rate established in the department's Medicaid Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age ~~Fee Schedule~~ fee schedule, as adopted at in ARM 37.87.901.

(3) through (5) remain the same.

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

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, MCA

37.87.901 MEDICAID MENTAL HEALTH SERVICES FOR YOUTH, REIMBURSEMENT (1) Medicaid reimbursement for mental health services shall be the lowest of:

(a) the provider's actual (submitted) charge for the service; or

(b) the rate established in the department's fee schedule. The department adopts and incorporates by reference the department's Medicaid Youth Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule dated ~~August 1, 2011~~ July 1, 2012. A copy of the fee schedule may be obtained from the Department of Public Health and Human Services, Developmental Services Division, Children's Mental Health Bureau, 111 Sanders, P.O. Box 4210, Helena, MT 59604 or at www.mt.medicaid.org.

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

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

37.87.2233 MENTAL HEALTH SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (SED) RESPITE CARE SERVICES, PROVIDER REIMBURSEMENT (1) and (2) remain the same.

(3) Reimbursement for respite care services is as provided in the department's Medicaid Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule fee schedule, as adopted in ARM 37.87.901.

(4) Providers of respite care services must accept the amounts payable under this rule as payment in full for the respite care services provided to youth with SED.

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

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.87.901.

This rule adopts and incorporates the "Medicaid Mental Health and Mental Health Services Plan, Individuals Under 18 years of Age Fee Schedule." The department proposes to amend the title to "Medicaid Youth Mental Health Services Fee Schedule," to accurately reflect current Children's Mental Health Bureau (CMHB) services included in the fee schedule and to update the effective date of the fee schedule from August 1, 2011 to July 1, 2012. The fee schedule references rates set by Montana Medicaid's resource based relative value scale (RBRVS) reimbursement method for psychologists, social workers, and professional counselors. The RBRVS is located in ARM 37.85.212 and is revised annually.

Additional amendments to the proposed fee schedule add language to provide clarity and improve readability. The department recognized areas in which information provided in the current fee schedule was also available in more suitable venues, such as the Children's Mental Health Bureau's Provider Manual and Clinical Guidelines for Utilization Management. The department proposes to remove the language that is redundant. To provide consistency throughout the fee schedule, the department reformatted the headings for select tables.

Furthermore, the department is proposing to add the Comprehensive School and Community Treatment (CSCT) fee to the fee schedule. The department transferred the CSCT program from the Health Resources Division to the Developmental Services Division in order to ensure coordination with various children's mental health services. This transfer began on January 1, 2012. The Children's Mental Health Bureau will begin administering the CSCT program effective July 1, 2012. CSCT is a Medicaid funded program, therefore it is appropriate to amend the fee schedule to include this fee. This will provide a consistent point of reference for mental health providers and serve to better coordinate the efforts across children's mental health services.

The department is also proposing the same amendments to ARM 37.87.733, 37.87.809, and 37.87.2233.

These rules reference the "Medicaid Mental Health Services Plan, Individuals under 18 years of age, Fee Schedule", adopted and incorporated in ARM 37.87.901. ARM 37.87.901 is being amended effective July 1, 2012; part of the proposed amendment is to rename the fee schedule "Medicaid Youth Mental Health Services Fee Schedule". The department proposes to update references to the fee schedule in these rules to ensure the department's rules remain consistent.

5. The department intends the proposed rule changes to be applied effective July 1, 2012.

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., May 24, 2012.

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

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

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

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

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State April 16, 2012.

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

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 38.3.706 pertaining to the	)	AMENDMENT
regulation of motor carriers)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED
)	

TO: All Concerned Persons

1. On June 21, 2012, the Department of Public Service Regulation proposes to amend 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 Department of Public Service Regulation no later than 4:00 p.m. on May 25, 2012, to advise us of the nature of the accommodation that you need. Please contact Aleisha Solem, Department of Public Service Regulation, 1701 Prospect Avenue, P. O. Box 202601, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; TDD (406) 444-4212; or e-mail asolem@mt.gov.

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

38.3.706 ENDORSEMENTS (1) through (2)(a) remain the same.

(b) Casualty (liability) insurance (Endorsement MV4) shall be issued in an amount no less than:

- (i) ~~\$300,000~~ 100,000 for ~~3~~ 7 passengers or less;
- (ii) ~~\$600,000~~ 500,000 for ~~4~~ 8 to ~~6~~ 15 passengers;
- (iii) ~~\$1,000,000~~ 750,000 for ~~7~~ 16 to ~~40~~ 30 passengers;
- (iv) ~~\$1,500,000~~ 5,000,000 for ~~44~~ 31 to ~~15~~ passengers or more;
- (v) ~~\$5,000,000 for 16 passengers or more~~ except any motor carrier, other

than as provided in (b)(i) above, operating under a certificate of public convenience and necessity authorizing passenger operations only within a particular city or 10 mile radius thereof is required to carry a minimum of \$500,000 insurance regardless of size of vehicle used;

(vi) \$100,000 for transportation of nonhazardous freight in a vehicle designed, equipped and primarily intended for transportation of seven passengers or less or a vehicle of manufacturer's GVW rating of 10,000 pounds or less designed, equipped, and primarily intended for transportation of cargo;

(vii) \$500,000 for transportation of nonhazardous freight for all other vehicles.

(3) remains the same.

AUTH: 69-12-201, MCA

IMP: 69-12-402, MCA

REASON: The existing minimum insurance levels have caused a few passenger motor carriers to request waivers of the rule due to financial hardship. They have demonstrated that their insurance costs will increase to such an extent that the rate increases necessary to recover those costs could affect the viability of their businesses. The commission believes it is better public policy to revert to the previous minimum insurance levels rather than grant waivers of a commission rule.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Aleisha Solem, Department of Public Service Regulation, 1701 Prospect Avenue, P. O. Box 202601, Helena, Montana, 59602-2601; 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., May 30, 2012.

5. If persons who are directly affected by the proposed amendment wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Dennis Lopach, Legal Division, Department of Public Service Regulation at the above address no later than 5:00 p.m., May 30, 2012.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be seven entities based on 72 entities affected.

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

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

site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ DENNIS LOPACH
Dennis Lopach
Rule Reviewer

/s/ TRAVIS KAVULLA
Travis Kavulla
Chairman
Department of Public Service Regulation

Certified to the Secretary of State April 16, 2012.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of ARM 42.13.101 and	)	AMENDMENT
42.13.111 relating to alcohol server)	
training compliance	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On May 29, 2012, the department proposes to amend the above-stated rules.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m. on May 4, 2012, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5825; fax (406) 444-4375; e-mail canderson@mt.gov.

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

42.13.101 COMPLIANCE WITH LAWS AND RULES (1) through (6) remain the same.

(7) A penalty for a licensee or licensee's employee not having a valid alcohol server training certificate shall be assessed against the licensee for whom the employee works at the time of the violation. The penalty for this violation is imposed against the licensee, and the licensee having multiple untrained employees on a particular date shall not be considered multiple violations; however, continued noncompliance on a future date may be considered as an additional violation of the server training requirement. The penalty shall be assessed in addition to any penalty for other Montana alcoholic beverage code violations such as sales to underage persons and/or sales to intoxicated persons, and the violation will be considered a separate violation by the department. Penalties for not having valid alcohol server training certificates may be taken into account based on the mitigating factors described in (8) when determining a licensee's total number of violations in a three-year period for purposes of the progressive penalty schedule in (3). However, the monetary penalty for each server training certificate violation shall be \$50 for a first offense, \$200 for a second offense, and ~~\$450~~ \$350 for a third offense in a three-year period.

(a) Example: If a licensee has one previous violation for sale after hours, and later violates the training certificate provision, the licensee will be penalized \$50 for the training certificate violation, although the violation will be considered a second

violation on the licensee's record. Then, if the licensee commits another violation within the same three-year period (for instance, a sale to an underage person), the penalty for that violation will be a third-violation penalty.

(8) remains the same.

(9) Mitigating circumstances in the case of sale to an underage person could result in a reprimand for the first offense under Title 16, MCA, within the most current three-year period if the licensee has provided alcoholic beverage service training acceptable to the department to all of its employees and reinforces that training with each employee at least every two years. The licensee must demonstrate that the person who made the sale to ~~a minor~~ an underage person has completed alcoholic beverage service training prior to the department considering issuance of a reprimand. A written reprimand will be considered a first offense for the application of the progressive penalty schedule only if the licensee commits the same offense again within one year. The written reprimand in lieu of a violation shall be available only one time per licensee.

(10) through (13) remain the same.

AUTH: 16-1-303, 16-4-1009, MCA

IMP: 16-3-301, 16-4-406, 16-4-1001, 16-4-1002, 16-4-1003, 16-4-1004, 16-4-1005, 16-4-1006, 16-4-1007, 16-4-1008, 16-6-305, 16-6-314, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.101(7), to correct the penalty amount for a licensee's 3rd violation of the requirement that all servers be trained and certified. The department previously published the rule showing an incorrect amount of \$450. The correct amount, per statute, is \$350. The department also proposes to amend (9), to change the term "a minor" to "an underage person," for consistent use of the term within the rule.

42.13.111 DEFINITIONS The following definitions apply to this subchapter:

(1) through (10) remain the same.

(11) "Sale to ~~a minor~~ an underage person" means a violation consisting of the unlawful sale, service, or delivery of an alcoholic beverage to a person under the age of 21.

(12) and (13) remain the same.

AUTH: 16-1-303, 16-1-424, 16-9-1009, MCA

IMP: 16-1-424, 16-3-302, 16-3-311, 16-4-312, 16-4-404, 16-4-406, 16-4-1001, 16-4-1002, 16-4-1003, 16-4-1004, 16-4-1005, 16-4-1006, 16-4-1007, 16-4-1008, 16-6-104, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.111, to change the term "sale to a minor" to read "sale to an underage person," to accurately reflect the term used in this subchapter.

4. Concerned persons may submit their data, views, or arguments in writing. Written data, views, or arguments may be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701;

telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov and must be received no later than 5:00 p.m., May 25, 2012.

5. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing they must make written request for a hearing and submit this request along with any written comments they have to Cleo Anderson at the above address no later than 5:00 p.m., May 25, 2012.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee; from a governmental subdivision or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2,329, based on approximately 23,296, who either are liquor licensees or alcohol servers, as of April 10, 2012.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Select the "Legal Resources" link in the left hand column, and click on the "Rules" link within to view the options under the "Current Rulemaking Actions – Published Notices" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State April 16, 2012

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 2.59.104 pertaining to)
semiannual assessment for banks)

TO: All Concerned Persons

1. On March 8, 2012, the Department of Administration published MAR Notice No. 2-59-470 pertaining to the proposed amendment of the above-stated rule at page 460 of the 2012 Montana Administrative Register, Issue Number 5.

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

3. The department has thoroughly considered the comments received. A summary of the comments received and the department's responses follow:

COMMENT #1: The Montana Independent Bankers Association (MIB) commented that it strongly supports the amendment.

RESPONSE #1: The department appreciates the MIB's support.

COMMENT #2: MIB's membership urges the department to keep the assessment at one-half the prior rate as long as is fiscally responsible.

RESPONSE #2: As stated in the notice of proposed amendment, this is a one-time 50% reduction in the semiannual assessment for banks. As also stated in the notice, the department is expecting a significant change in the number of state-chartered banks in calendar year 2012 and will be reviewing the assessment rates after the impact of that change is known. The department expects to propose a permanent downward revision in the semiannual assessment for banks after anticipated changes in the banking industry occur and the effect of those changes can be determined.

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

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

Certified to the Secretary of State, April 16, 2012.

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

In the matter of the adoption of NEW	)	NOTICE OF ADOPTION,
RULE I [12.11.504], amendment of	)	AMENDMENT, AND REPEAL
ARM 12.11.2308, 12.11.3201, and)	
12.11.3215, and repeal of ARM)	
12.11.1001, 12.11.2401, and)	
12.11.3601 regarding no wake zones)	
surrounding commercial marinas)	

TO: All Concerned Persons

1. On February 9, 2012 the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-374 on the proposed adoption, amendment, and repeal of the above-stated rules at page 253 of the 2012 Montana Administrative Register, Issue Number 3.

2. The commission has adopted NEW RULE I [12.11.504], amended ARM 12.11.2308, 12.11.3201, and 12.11.3215, and repealed ARM 12.11.1001, 12.11.2401, and 12.11.3601 as proposed.

3. The commission has thoroughly considered the comments and testimony received. Five written comments were received during the comment period. A summary of the comments received and the commission's responses are as follows:

Comment 1: Two people were in full support of the proposal.

Response 1: The commission appreciates the interest and participation in this rulemaking process.

Comment 2: Two people stated concerns that if rule goes into effect that recreational opportunities will be diminished because of the proximity of a marina to where they live.

Response 2: Marinas are not required to have established no wake zones. The no wake rule will only be in effect if a marina chooses to post signs or buoys for a no wake zone.

Comment 3: One person asked for a clear definition of "no wake" and asked who would be responsible for the signs. This person wanted the state to be responsible for consistency.

Response 3: "No wake" is defined in ARM 12.11.101 as "a speed whereby there is no 'white' water in the track or path of the vessel or in created waves immediate to the vessel". The Department of Fish, Wildlife and Parks will assist the marina

owners with the purchasing of buoys if needed, but the marinas will be responsible for the maintenance of the buoys.

/s/ Bob Ream

Bob Ream, Chairman
Fish, Wildlife and Parks Commission

/s/ John F. Lynch

John F. Lynch
Rule Reviewer

Certified to the Secretary of State April 16, 2012

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT
17.40.201, 17.40.202, 17.40.203,)	
17.40.206, and 17.40.208 pertaining to	)	(WATER TREATMENT SYSTEMS
definitions, classification of systems,	)	AND OPERATORS)
certification of operators, examinations,)	
certified operator in charge of system--)	
exceptions)	

TO: All Concerned Persons

1. On February 9, 2012, the Department of Environmental Quality published MAR Notice No. 17-329 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 257, 2012 Montana Administrative Register, issue number 3.

2. The department has amended ARM 17.40.201, 17.40.202, 17.40.203, 17.40.206, and 17.40.208 exactly as proposed.

3. The following comment was received and appears with the department's response:

COMMENT: One commentor appreciates the proposed rule changes, but has a concern. The requirement to obtain a discharge permit for an on-site system was adopted in 1998. There are a significant number of systems approved prior to that date that are not required to have a discharge permit. Commentor requests expansion of the proposed rules to include those non-permitted systems.

RESPONSE: The department's decision to limit the proposed amendment to systems operating under a discharge permit came after much discussion with interested parties. The proposed amendments require only those systems with the responsibility of complying with monitoring and reporting requirements required by a discharge permit to have a certified operator. Because the notice did not propose that systems without a discharge permit be required to have a certified operator, the department cannot now modify the rule to require it. Those persons are entitled to notice and an opportunity to comment before the requirement could be applied to them. The department may consider expansion of the requirements at a later date. However, the department has not made the requested change in this rulemaking proceeding.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

By: /s/ Richard H. Opper
RICHARD H. OPPER, DIRECTOR

Certified to the Secretary of State, April 16, 2012.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I and II pertaining to fuel tax)
refund for agricultural uses)

TO: All Concerned Persons

1. On February 23, 2012 the Department of Transportation published MAR Notice No. 18-133 pertaining to the proposed adoption of the above-stated rules at page 330 of the 2012 Montana Administrative Register, Issue Number 4.

2. The department has adopted the above-stated rules as proposed: New Rule I (18.9.325), II (18.9.326).

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: Two comments were received stating New Rule II's requirement that applicants provide various state and federal tax forms, schedules, and statements may subject applicants to identity theft. The comments stated MDT employees should not have access to the information on the tax forms. The comments stated the rule's requirement for provision of the forms will allow more invasion of privacy by the state.

RESPONSE #1: New Rule II's requirement for specific state and tax information will not put applicants at higher risk for identity theft since it is the same information already being received and the rule is only clarifying the specific lines of information that are used. MDT has a strict security policy and this information will be available to a limited number of authorized MDT tax division employees who have a need to access the information to determine eligibility for refunds, with penalties for any unauthorized use of the private or confidential information.

COMMENT #2: Two comments were received stating New Rule II's requirement that applicants provide various state and federal tax forms, schedules, and statements will require more state employees, and create "bigger government."

RESPONSE #2: New Rule II's requirement for the applicants to provide various state and federal tax forms will not require more state employees since MDT is already receiving these tax forms to determine eligibility for refunds. This rule will clarify the information that is required and used which will increase the efficiency of finding the information on the forms thus saving employee time.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

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

Certified to the Secretary of State April 16, 2012.

BEFORE THE BOARD OF FUNERAL SERVICE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.147.401 fee schedule)

TO: All Concerned Persons

1. On February 23, 2012, the Board of Funeral Service (board) published MAR notice no. 24-147-34 regarding the public hearing on the proposed amendment of the above-stated rule, at page 351 of the 2012 Montana Administrative Register, issue no. 4.

2. On March 16, 2012, a public hearing was held on the proposed amendment of the above-stated rule in Helena. Several comments were received by the March 23, 2012, deadline.

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

COMMENT 1: One commenter opposed the increases and stated that the timing of the fee increase during the present economic circumstances is unreasonable.

RESPONSE 1: The board recognizes the difficulty of the present economic circumstances and notes that the board rejected previous requests from the department to increase fees. However, in anticipation of a negative cash balance prior to the revenue-generating renewal cycle (which, in fact, transpired after the proposed rule notice in the amount of \$10,000), and in consideration of the fairly constant number of licensees generating revenue offset by increased expenses, the board decided it could no longer avoid proposing to increase fees.

COMMENT 2: One commenter opposed the 50 percent increase all at once, but suggested the board instead raise fees gradually over a period of time. A 20 percent or 25 percent increase would be acceptable, but an increase of 50 percent is out of proportion.

RESPONSE 2: A 20 percent or 25 percent increase would not have been sufficient to address the amount of FY 2011 expenses alone, and with an anticipated increase of ten percent of expenses over last fiscal year, a 50 percent increase is necessary. The board is concerned about costs associated with incremental fee increases and is attempting to balance necessary revenue with these concerns.

COMMENT 3: A commenter suggested the board reduce operating expenses and implement a smaller fee increase.

RESPONSE 3: The board will continue to examine operating expenses with scrutiny. The department, likewise, will continue to organize and provide its administrative services to the board in an economical manner as possible, including implementing a new database and division reorganization that it anticipates will improve department services to the board.

At each meeting, the board discusses and provides copies of its budget, income, and expense statements to the public and encourages public comment on those items.

COMMENT 4: Several commenters opposed the increases and argued that the board is not using the fees to appropriately police the industry and ensure public safety. The commenters might accept the increased fees if licensees had greater confidence in the board's enforcement arm, but asserted the board has allowed a crematory operator to do removals, remove pacemakers, and discuss prices and arrangements for final disposition, which the commenters state are things only licensed morticians may do. As long as the board allows this threat against consumer protection to continue, no fee increase should be approved.

RESPONSE 4: The board has incurred expenses to process, investigate, and where supported by the evidence and law, prosecute complaints against licensees for unprofessional conduct and against individuals for unlicensed practice. A significant portion of this work goes on outside of public view and may go unnoticed by licensees. The board is also pursuing public enforcement actions, and the defense of these actions, and anticipated legal costs associated with doing so is included in the projected expenses for the fiscal year 2012 and 2013. These costs are also part of the reason why the board finds it necessary to increase fees.

COMMENT 5: Several commenters asserted that language in the reasonable necessity statement providing the need to increase fees by 50 percent now in order to avoid another increase in the near future implies that the board decided to increase fees beyond what is needed to cover current costs, and therefore violates statute. The commenters asserted that 37-1-134, MCA, which requires fees to be set commensurate with costs, refers to current costs, not anticipated costs. It is not appropriate for the board to build a reserve with fee increases for potential future costs that are not currently being incurred, just to avoid going through future rulemaking if and when increases are needed.

COMMENT 6: Several commenters stated that even though the board's current budget shows a significant negative difference between income and expenditures, the statement of reasonable necessity for the increases was inadequate, as it did not set forth whether the revenue expected from the fee increases would be commensurate with costs. Although the board appears to have considered various options of raising licensing fees, the commenters opined that the method used to justify the 50 percent fee increase on all licenses appears arbitrary.

RESPONSES 5 and 6: Section 37-1-134, MCA, does not contain language referring to "current" costs or other limitations of that nature. The board did not decide to

increase fees beyond what it determined is reasonably necessary. The board disagrees with the premise that it must only set fees based on "current" costs, because failing to anticipate future expenses would likely result in fiscal insolvency.

There has been a 29.59 percent increase since FY 2009 in personal services, including a 26.03 percent increase in health insurance premiums. The board has experienced turnover in administrative staff, which contributed to this increase. Legal services increased by almost 30 percent, and the rent for the Business Standards Division at the Park Avenue building has increased by 32.31 percent, and is expected to continue to increase with the leasing of additional space.

Information technology costs have increased by 44 percent, due in part to a new database conversion and the development and refinement of online transactions. The board anticipates significant costs related to the litigation of contested cases, including district court and possible appellate court costs, to engage in housekeeping legislation, and to revise administrative rules, which have not been updated since 2006.

The following chart demonstrates the board's expenses have increased by an average of ten percent per year over the past four years, while the number of licenses and revenue remain constant. If expenses increase at ten percent, the total expenses would be \$130,298. Compared with FY 2011 income at \$101,946, the difference leaves the department short \$28,298. The proposed revenue increase at 50 percent will garner \$152,919 and, hopefully, provide a sufficient safety net to meet any significant unexpected costs.

It should be noted that FY 2011 income, on which the projections are based, exceeded past years' income due to additional revenue resources, such as new applications. If the number of applications and other sources of nonroutine and recurring revenue return to a more typical level, the 50 percent increase on license fees and the revenue generated will come very close to meeting the projected expenses of \$130,298.

FY	Expenses	% Increase Over Last Year	Revenue	Deficit or Surplus
2011	\$118,453	26%	\$101,946	\$(16,507)
2010	\$93,713	2%	\$89,128	\$(4,585)
2009	\$91,979	4%	\$89,985	\$(1,994)
2008	\$88,400	8%	\$87,294	\$(1,106)
2007	\$82,053		\$94,055	\$12,002

If the board does build its cash reserve, the provisions of 17-2-302, MCA, prohibit it from maintaining a cash balance in its special revenue fund greater than twice the annual appropriation for that year, or greater than the biennial appropriation from the account for the biennium. The department manages these balances to avoid this occurrence and will abate renewal fees whenever this condition exists, as provided in ARM 24.101.301. Further, the legislative fiscal division maintains oversight of these cash balances through its audit process.

COMMENT 7: One commenter stated the method of raising fees by 50 percent on all licenses does not take into account the small business owner licensees who own multiple funeral homes. The commenter stated that the business the commenter associates with has licensing fees for five facilities and four individuals that would increase from \$2,050 to \$3,225, a net increase of \$1,175.

RESPONSE 7: The board concluded that increasing fees by a percentage on each license type was the most equitable manner of achieving the necessary revenue increase. An owner operating multiple facilities will see increases in a variety of categories of expenses, one being the facility fee. The mortuary fee, for example, will increase from \$250 to \$375.

COMMENT 8: Several commenters suggested the board withdraw the fee proposal and "go back to the drawing board." The commenters stated the board should develop and communicate a written plan to the licensees to ensure that end-of-life services are being provided by appropriately licensed individuals, and establish a more equitable and just schedule for raising licensing fees. Then, the board could submit a new rulemaking proposal to raise fees that supports the written plan and provides detailed information on the financial projections of the board, especially which fees will go to execute the written plan, and that the board is collecting only those fees that will go toward the current year's expenses.

RESPONSE 8: The board decided not to incur the expense to go through another rulemaking process at this time. The board will continue to enforce its laws and rules by processing complaints, and defending or prosecuting those actions when contested. The board agrees that a work plan is a beneficial exercise in meeting the goals and objectives of the board.

4. The board has amended ARM 24.147.401 exactly as proposed.

BOARD OF FUNERAL SERVICE
R.J. (DICK) BROWN, CHAIRPERSON

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

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

Certified to the Secretary of State April 16, 2012

BEFORE THE BOARD OF HEARING AID DISPENSERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.150.301 definitions,)
24.150.401 fees, 24.150.402 record)
retention, 24.150.501 examination,)
and 24.150.602 transactional)
document requirements)

TO: All Concerned Persons

1. On February 9, 2012, the Board of Hearing Aid Dispensers (board) published MAR notice no. 24-150-37 regarding the public hearing on the proposed amendment of the above-stated rules, at page 294 of the 2012 Montana Administrative Register, issue no. 3.

2. On March 1, 2012, a public hearing was held on the proposed amendment of the above-stated rules in Helena. One comment was received by the March 9, 2012, deadline.

3. The board has thoroughly considered the comment received. The comment and the board's response are as follows:

COMMENT 1: One commenter opposed the proposed fee increases in ARM 24.150.402, stating that with the higher fees, the commenter will not be able to serve the hard of hearing with home visits to small Montana towns. The commenter predicted that the elderly population will have to drive hundreds of miles to receive services, relationships with the hard of hearing will continue to deteriorate due to chronic miscommunication, and the commenter will have to raise prices, which the elderly cannot afford. The commenter also cautioned that the hard of hearing elderly will continue to lose sound and word recognition, which does not return without regular hearing aid use.

RESPONSE 1: The board is very sympathetic to the commenter's situation, but the board has discussed this exhaustively and ultimately determined that there are no other alternatives other than raising fees as proposed to allow the board to continue to operate.

4. The board has amended ARM 24.150.301, 24.150.401, 24.150.402, 24.150.501, and 24.150.602 exactly as proposed.

BOARD OF HEARING AID DISPENSERS
GENE BUKOWSKI, CHAIRPERSON

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

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

Certified to the Secretary of State April 16, 2012

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT,
ARM 24.174.301 definitions,	)	ADOPTION, AND REPEAL
24.174.402 dangerous drug fee)	
schedule, 24.174.503 administration)	
of vaccines by pharmacists,)	
24.174.523 transmission of)	
prescriptions, 24.174.1003)	
identification of pharmacist-in-charge,)	
24.174.1202 minimum information)	
required for licensure, 24.174.1302)	
telepharmacy operations,)	
24.174.1503 acceptable cancer)	
drugs, the adoption of NEW RULES I)	
emergency prescription refills, II)	
remote medication order processing)	
services, III schedule I dangerous)	
drugs, IV schedule II dangerous)	
drugs, V schedule III dangerous)	
drugs, VI schedule IV dangerous)	
drugs, VII schedule V dangerous)	
drugs, VIII through XVI board-)	
established medical assistance)	
program, XVII through XXII quality)	
improvement program, XXIII limited)	
service pharmacy, and the repeal of)	
ARM 24.174.813 class IV facility)	

TO: All Concerned Persons

1. On December 22, 2011, the Board of Pharmacy (board) published MAR notice no. 24-174-62 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 2761 of the 2011 Montana Administrative Register, issue no. 24.

2. On January 23, 2012, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Several comments were received by the January 31, 2012, deadline.

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

ARM 24.174.523 Transmission of Prescriptions by Electronic Means:

COMMENT 1: One commenter asserted that the reasonable necessity statement for the proposed deletion of home infusion from (2)(a) is incomplete since it does not mention the mandatory Montana home infusion therapy license issued through the Department of Public Health and Human Services (DPHHS). The commenter concluded that while the proposed amendments need not be altered, the board and staff should be cautious to avoid imprecise language that could mislead licensees.

RESPONSE 1: The board agrees with the commenter that the statement of reasonable necessity omitted mention of the DPHHS's statute defining "home infusion therapy agencies" as "healthcare facilities" that must be licensed through DPHHS. See §§50-5-101(23)(a), 50-5-201(2), MCA; ARM 37.86.1502(2). As the commenter acknowledged, the comment does not touch on the substance of the proposed amendments and the board is amending this rule exactly as proposed.

COMMENT 2: One commenter stated that the proposed amendments to (2) are inconsistent with federal regulations at 21 C.F.R. Part 1311, which provide an electronically transmitted prescription may serve as the record of the prescription as long as it can be stored and retrieved consistent with applicable record-keeping requirements. The commenter suggested that the inconsistent requirement for collection of "the original, signed prescription" prior to dispensing should be deleted in favor of substitute language consistent with federal regulations.

RESPONSE 2: Noting that electronic prescriptions have not been fully implemented, the board concluded that until such an electronic system is in place, Montana must still require pharmacists to maintain a hardcopy record. With an electronic system on the horizon, the board resolved to be proactive and revisit this issue in July 2012, and update the rule, if necessary, to conform to the national picture. The board is amending this rule exactly as proposed.

COMMENT 3: One commenter supported the adoption of New Rules III through VII, Dangerous Drug schedules, noting that recently, new drugs have emerged designed to circumvent health and safety laws. Though these drugs have yet to be studied, reports from emergency room doctors, law enforcement officers, and family members of abusers report that the "new designer drugs" have severe physiological and behavioral side effects. The commenter believed that the new rules will protect the citizens of Montana and offer the criminal justice system tools with which to prosecute the use and distribution of these drugs.

RESPONSE 3: The board appreciates all comments received in the rulemaking process and is adopting New Rules III through VII exactly as proposed.

COMMENT 4: One commenter offered support for proposed New Rule III that includes in Schedule I Dangerous Drugs, compounds commonly called "bath salts": Mephedrone, Methylene-dioxypyrovalerone (MDPV), or Methylone. The commenter asserted that the use, manufacture, and distribution of bath salts is a growing menace in Montana and requires law enforcement officers to face unpredictable and violent behavior from abusers. Such conduct was not prosecutable, because bath

salts were not listed among the schedules. The commenter supported scheduling these drugs, so they could be prosecuted under the criminal statutes in Title 45, chapter 9.

RESPONSE 4: The board appreciates all comments received in the rulemaking process and is adopting New Rule III exactly as proposed.

NEW RULE XVII – XXII Quality Improvement Program

COMMENT 5: One commenter objected to the proposed requirement in New Rules XVII and XXI that licensed pharmacies report "near-miss" quality-related events. The commenter stated that many pharmacies already have quality assurance programs and are committed to patient safety and initiatives to reduce medication errors, and argued that the quality improvement program need not track events that had no effect on the patient. The commenter opined that the fact that no actual quality-related event occurred would demonstrate the effectiveness of the existing quality assurance program. The commenter recommended deleting references to "near-miss" events in New Rules XVII and XXI.

The commenter also recommended the board amend New Rule XXI to require QRE reports be submitted to a "federally-certified patient safety organization," rather than the Institute for Safe Medicine Practices.

COMMENT 6: One commenter suggested the board amend New Rule XVII(5), by adding individuals employed as pharmacy clerks to the definition of pharmacy personnel. The commenter noted that errors could occur at the clerk's stage if the clerk presented a properly prepared prescription to the wrong patient.

RESPONSES 5 and 6: The board considered comments 5 and 6, and discussed the design of the quality improvement program rules which was modeled after a program approved by the National Association of Boards of Pharmacy. Among other things, the board debated whether near-miss events should be reported, how nonlicensees such as pharmacy clerks should be factored, what clearinghouse(s) should collect the reports, the board's intent that the system be nonpunitive and geared toward improving the practice, and whether the rules should be more specific. Following this discussion, the board decided not to adopt New Rules XVII through XXII at this time and will revisit these issues at a future board meeting.

4. The board has amended ARM 24.174.301, 24.174.402, 24.174.503, 24.174.523, 24.174.1003, 24.174.1202, 24.174.1302, and 24.174.1503 exactly as proposed.

5. The board has adopted NEW RULES I (24.174.515), II (24.174.1112), III (24.174.1420), IV (24.174.1421), V (24.174.1422), VI (24.174.1423), VII (24.174.1424), VIII (24.174.1601), IX (24.174.1602), X (24.174.1603), XI (24.174.1604), XII (24.174.1605), XIII (24.174.1606), XIV (24.174.1607), XV (24.174.1608), XVI (24.174.1609), and XXIII (24.174.830) exactly as proposed.

6. The board has repealed ARM 24.174.813 exactly as proposed.
7. The board did not adopt NEW RULES XVII through XXII as proposed.

BOARD OF PHARMACY
LEE ANN BRADLEY, RPH, PRESIDENT

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

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

Certified to the Secretary of State April 16, 2012

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

In the matter of the adoption of New) CORRECTED NOTICE OF
Rules I and II, and the repeal of ARM) ADOPTION AND
37.34.206, 37.34.215, 37.34.216, and) AMENDMENT
37.34.221 pertaining to)
developmental disabilities eligibility)
rules for Medicaid only)

TO: All Concerned Persons

1. On March 10, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-534 pertaining to the public hearing on the proposed adoption and repeal of the above-stated rules at page 312 of the 2011 Montana Administrative Register, Issue Number 5. On June 23, 2011 the department published the notice of adoption and amendment at page 1158 of the 2011 Montana Administrative Register, Issue Number 12. On July 14, 2011 the department published a corrected notice of adoption and amendment at page 1311 of the 2011 Montana Administrative Register, Issue Number 13.

2. This notice of correction is being filed to correct a typographical error made in the notice of adoption making a further change to a proposed subsection contained in the list of reasons a person's Developmental Disabilities Program eligibility may be terminated. Each item on the list began with or contained the text "the person" when referring to the person whose eligibility may be terminated. The word "a" was inadvertently used instead of "the" in one of the items on the list. In order to be consistent and to ensure which person is being referred to, the word "a" is being changed to "the." The rule, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

37.34.225 DEVELOPMENTAL DISABILITIES COMMUNITY SERVICES
ELIGIBILITY: TERMINATION OF ELIGIBILITY FOR A PROGRAM (1) remains as adopted.

(2) The department may terminate a person's eligibility for a particular program of services if:

- (a) the program services or funding necessary to implement the person's service plan are unavailable from the program;
- (b) the professional and other services necessary to implement the person's service plan are unavailable;
- (c) the person does not cooperate in the eligibility determination process;
- (d) the person does not participate in the planning for service delivery;
- (e) the program services are no longer appropriate or cost effective in relation to the person's needs and there are no alternative program services available by which a service plan can be implemented to provide for the person's needs;

(f) a the person poses imminent risk to the health and safety of the person or another person by not participating in the program services available to that person;

(g) behaviors of the person preclude the delivery of program services as provided for in the person's service plan;

(h) behaviors of the person necessitate that the person must be served in a setting that is not available through the program or in which the services of the program may not be delivered; or

(i) health status of the person necessitates that the person must be served in a setting that is not available through the program or in which the services of the program may not be delivered.

3. The replacement pages for this corrected notice were submitted to the Secretary of State on March 31, 2012.

/s/ Cary B. Lund
Rule Reviewer

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

Certified to the Secretary of State April 16, 2012.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: **Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|------------------|---|
| Known
Subject | 1. Consult ARM Topical Index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2011. This table includes those rules adopted during the period January 1, 2012, through March 31, 2012, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2011, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2011/2012 Montana Administrative Register.

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

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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in March 2012 appear. Vacancies scheduled to appear from May 1, 2012, through July 31, 2012, 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 April 1, 2012.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM MARCH, 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Acting Adjutant General (Military Affairs)			
Major Joel Cusker Helena	Governor	none specified	3/8/2012 0/0/0
Qualifications (if required): resident of District 3			
Board of Horseracing (Livestock)			
Mr. Allen Fisher Ashland	Governor	Drew	3/2/2012 1/20/2015
Qualifications (if required): resident of District 1			
Mr. John Hayes Great Falls	Governor	Tatsey	3/2/2012 1/20/2015
Qualifications (if required): resident of District 3			
Sen. Dale Mahlum Missoula	Governor	Carruthers	3/2/2012 1/20/2013
Qualifications (if required): industry representative			
Mr. Ralph Young Columbus	Governor	Tracy	3/28/2012 1/20/2013
Qualifications (if required): industry representative			
Motorcycle Safety Advisory Commission (Commissioner of Higher Education)			
Mr. Derek Brown Bozeman	Governor	King	3/6/2012 7/1/2015
Qualifications (if required): peace officer			

BOARD AND COUNCIL APPOINTEES FROM MARCH, 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Motorcycle Safety Advisory Commission (Commissioner of Higher Education) cont.			
Ms. Tina Schmaus Missoula	Governor	Baldwin	3/6/2012 7/1/2015
Qualifications (if required): cycle group member			
Water and Waste Water Operators' Advisory Council (Environmental Quality)			
Mr. Andrew Loudermilk Kalispell	Governor	Porrazzo	3/1/2012 10/16/2012
Qualifications (if required): water treatment plant operator			
Mr. Lorren Schlotfeldt Havre	Governor	Reifschneider	3/1/2012 10/16/2017
Qualifications (if required): university faculty member			
Youth Justice Council (Justice)			
Ms. Laura Bomboy Singley Lewistown	Governor	Lechner	3/6/2012 3/6/2014
Qualifications (if required): representative of law enforcement			
Mr. Tim Brurud Havre	Governor	reappointed	3/6/2012 3/6/2014
Qualifications (if required): representative of private nonprofit agencies			
Ms. Pamela Carbonari Kalispell	Governor	reappointed	3/6/2012 3/6/2014
Qualifications (if required): competency in addressing problems facing youth			

BOARD AND COUNCIL APPOINTEES FROM MARCH, 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Youth Justice Council (Justice) cont.			
Mr. Nolan Cavanaugh East Helena Qualifications (if required): youth representative	Governor	Cox	3/6/2012 3/6/2014
Ms. Katie Champion Bozeman Qualifications (if required): representative of private nonprofit agencies	Governor	reappointed	3/6/2012 3/6/2014
Mr. Larry Dunham Condon Qualifications (if required): volunteer who works with delinquents	Governor	reappointed	3/6/2012 3/6/2014
Ms. Leah Heffelfinger East Helena Qualifications (if required): youth representative	Governor	Kistler	3/6/2012 3/6/2014
Judge Pedro Hernandez Billings Qualifications (if required): representative of law enforcement	Governor	reappointed	3/6/2012 3/6/2014
Mr. Nick Korthais Townsend Qualifications (if required): representative of law enforcement	Governor	Granger	3/6/2012 3/6/2014
Mr. Chaz McGurn Helena Qualifications (if required): youth representative	Governor	Love	3/6/2012 3/6/2014

BOARD AND COUNCIL APPOINTEES FROM MARCH, 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Youth Justice Council (Justice) cont.			
Ms. Cindy McKenzie Helena	Governor	Stanford	3/6/2012 3/6/2014
Qualifications (if required): representative of public agencies			
Ms. Elinor Nault Box Elder	Governor	Love	3/6/2012 3/6/2014
Qualifications (if required): competency in addressing problems facing youth			
Ms. Jilyn Oliveira Helena	Governor	Mariska	3/6/2012 3/6/2014
Qualifications (if required): representative of public agencies			
Mr. Adam Stern Livingston	Governor	Tracy	3/6/2012 3/6/2014
Qualifications (if required): local elected official			
Mr. Roy Tanniehill Helena	Governor	Lowney	3/6/2012 3/6/2014
Qualifications (if required): representative of law enforcement			

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2012 through July 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Aging Advisory Council (Public Health and Human Services) Ms. Gladys Considine, Missoula Qualifications (if required): public representative</p>	Governor	7/9/2012
<p>Ms. Mary Lou Miller, Wolf Point Qualifications (if required): public representative</p>	Governor	7/18/2012
<p>Ms. JoLynn Yenne, Bigfork Qualifications (if required): public representative</p>	Governor	7/18/2012
<p>Board of Banking (Administration) Rep. Mark E. Noennig, Billings Qualifications (if required): public representative</p>	Governor	7/1/2012
<p>Mr. Jon Redlin, Lambert Qualifications (if required): state bank officer, large size bank</p>	Governor	7/1/2012
<p>Board of Funeral Service (Labor and Industry) Mr. Ronald E. Brothers, Hamilton Qualifications (if required): mortician</p>	Governor	7/1/2012
<p>Mr. Bart Thompson, Helena Qualifications (if required): cemetarian</p>	Governor	7/1/2012
<p>Mr. John Tarr, Helena Qualifications (if required): public representative</p>	Governor	7/1/2012

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2012 through July 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Hearing Aid Dispensers (Labor and Industry) Mr. Brian Bolenbaugh, Missoula Qualifications (if required): hearing aid dispenser (no masters)</p>	Governor	7/1/2012
<p>Ms. Rebecca Wisnoskie, Helena Qualifications (if required): hearing aid dispenser (no masters)</p>	Governor	7/1/2012
<p>Board of Massage Therapists (Labor and Industry) Mr. Stacy Baird, East Helena Qualifications (if required): massage therapist</p>	Governor	5/6/2012
<p>Board of Nursing (Labor and Industry) Ms. Kathy Hayden, Missoula Qualifications (if required): licensed practical nurse</p>	Governor	7/1/2012
<p>Ms. Heather Onstad, Helena Qualifications (if required): registered nurse/educator</p>	Governor	7/1/2012
<p>Board of Nursing Home Administrators (Labor and Industry) Ms. Carla Neiman, Plains Qualifications (if required): representative of an institution caring for the aged</p>	Governor	5/28/2012
<p>Mr. Joshua Brown, Columbia Falls Qualifications (if required): nursing home administrator</p>	Governor	5/28/2012
<p>Board of Pharmacy (Labor and Industry) Ms. Susan Hagen, Glasgow Qualifications (if required): public representative</p>	Governor	7/1/2012

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2012 through July 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Physical Therapy Examiners (Labor and Industry) Ms. Kim Miller, Virginia City Qualifications (if required): public member</p>	Governor	7/1/2012
<p>Ms. Patti Jo Lane, Great Falls Qualifications (if required): physical therapy</p>	Governor	7/1/2012
<p>Mr. Christian Appel, Bozeman Qualifications (if required): physical therapist</p>	Governor	7/1/2012
<p>Board of Plumbers (Labor and Industry) Mr. Jeffrey Gruizenga, Billings Qualifications (if required): professional engineer (mechanical)</p>	Governor	5/4/2012
<p>Board of Public Accountants (Labor and Industry) Ms. Beatrice Rosenleaf, Anaconda Qualifications (if required): public representative</p>	Governor	7/1/2012
<p>Mr. Jack Meyer, Missoula Qualifications (if required): Certified Public Accountant</p>	Governor	7/1/2012
<p>Board of Radiologic Technologists (Labor and Industry) Ms. Kelli Bush, Butte Qualifications (if required): radiologic technician</p>	Governor	7/1/2012
<p>Ms. Sharlett Dale, Harlowton Qualifications (if required): radiologic technician</p>	Governor	7/1/2012

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2012 through July 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Real Estate Appraisers (Labor and Industry) Ms. Kathleen Susan Gallaher, Bozeman Qualifications (if required): public representative</p>	Governor	5/1/2012
<p>Mr. Darwin Ernst, Hamilton Qualifications (if required): real estate appraiser</p>	Governor	5/1/2012
<p>Board of Realty Regulation (Labor and Industry) Mr. Pat Goodover, Great Falls Qualifications (if required): real estate salesperson</p>	Governor	5/9/2012
<p>Board of Regents (High Education) Mr. Joseph Thiel, Bozeman Qualifications (if required): full-time student in the Montana State</p>	Governor	6/30/2012
<p>Board of Sanitarians (Labor and Industry) Mr. Rodney Fink, Columbus Qualifications (if required): sanitarian</p>	Governor	7/1/2012
<p>Board of Veterinary Medicine (Labor and Industry) Ms. Barbara Calm, Kila Qualifications (if required): veterinarian</p>	Governor	7/31/2012
<p>Board of Water Well Contractors (Natural Resources and Conservation) Mr. Kevin Haggerty, Bozeman Qualifications (if required): water well contractor</p>	Governor	7/1/2012

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2012 through July 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Water Well Contractors (Natural Resources and Conservation) cont. Mr. Laurence Siroky, Helena Qualifications (if required): none specified	Director	7/1/2012
Commission on Practice of the Supreme Court (Supreme Court) Ms. Jean Faure, Great Falls Qualifications (if required): none specified	elected	6/9/2012
Community Service Commission (Labor and Industry) Ms. Nancy Matheson, Helena Qualifications (if required): agency representative	Governor	7/1/2012
Ms. Karin Olsen Billings, Helena Qualifications (if required): agency representative	Governor	7/1/2012
Mr. John Ilgenfritz, Helena Qualifications (if required): public representative	Governor	7/1/2012
Col. Scott Smith, Fort Harrison Qualifications (if required): agency representative	Governor	7/1/2012
Mr. Robert Nystuen, Lakeside Qualifications (if required): representative of business	Governor	7/1/2012
District Court Council (Supreme Court) Ms. Lori Maloney, Butte Qualifications (if required): none specified	District Court	6/30/2012

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2012 through July 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
District Court Council (Supreme Court) cont. Judge Gregory R. Todd, Billings Qualifications (if required): none specified	District Court	6/30/2012
Economic Development Advisory Council (Commerce) Mr. Jim Atchison, Colstrip Qualifications (if required): public representative	Governor	7/23/2012
Ms. Elizabeth Marchi, Polson Qualifications (if required): public representative	Governor	7/23/2012
Mr. Joe Menicucci, Belgrade Qualifications (if required): public representative	Governor	7/23/2012
Mr. Richard Sangrey, Box Elder Qualifications (if required): public representative	Governor	7/23/2012
Mr. Wade Sikorski, Baker Qualifications (if required): public representative	Governor	7/23/2012
Electrical Board (Labor and Industry) Ms. Marlene Egan, Helena Qualifications (if required): public representative	Governor	7/1/2012
Mr. Keith Simendinger, Helena Qualifications (if required): public representative	Governor	7/1/2012

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2012 through July 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Family Education Savings Oversight Committee (Commissioner of Higher Education) Mr. Gene Jarussi, Billings Qualifications (if required): public representative</p>	Governor	7/1/2012
<p>Historical Society Board of Trustees (Historical Society) Mr. Steve Carney, Scobey Qualifications (if required): public member</p>	Governor	7/1/2012
<p>Horse Racing Business Advisory Council (Governor) Director Dore Schwinden, Helena Qualifications (if required): representative of the Department of Commerce</p>	Governor	6/30/2012
<p>Mr. Christian Mackay, Helena Qualifications (if required): representative of the Department of Livestock</p>	Governor	6/30/2012
<p>Sen. Cliff Larsen, Missoula Qualifications (if required): public representative</p>	Governor	6/30/2012
<p>Interagency Coordinating Council for State Prevention Programs (Public Health and Human Services) Ms. Diane Cashell, Bozeman Qualifications (if required): prevention programs/services experience</p>	Governor	6/16/2012
<p>Ms. Patty Stevens, Ronan Qualifications (if required): prevention programs/services experience</p>	Governor	6/16/2012
<p>Library Commission (Higher Education) Mr. Donald W. Allen, Billings Qualifications (if required): public representative</p>	Governor	5/22/2012

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2012 through July 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Library Commission (Higher Education) cont. Ms. Anita Scheetz, Sidney Qualifications (if required): public representative</p>	Governor	5/22/2012
<p>Mental Disabilities Board of Visitors (Governor) Ms. Joan Nell Macfadden, Great Falls Qualifications (if required): having experience with emotionally disturbed children</p>	Governor	7/1/2012
<p>Mr. Graydon Davies Moll, Ronan Qualifications (if required): having experience with developmentally disabled adults</p>	Governor	7/1/2012
<p>Ms. Sandra Mihelish, Helena Qualifications (if required): experience with welfare of mentally ill individuals</p>	Governor	7/1/2012
<p>Mint Committee (Agriculture) Mr. Clyde Fisher, Columbia Falls Qualifications (if required): representative of the mint industry research council</p>	Governor	7/1/2012
<p>Mr. Kirk Passmore, Kalispell Qualifications (if required): mint grower</p>	Governor	7/1/2012
<p>Montana Cherry Commodity Advisory Committee (Agriculture) Mr. Jan Tusick, Ronan Qualifications (if required): none specified</p>	Director	5/3/2012
<p>Montana Health Coalition (Public Health and Human Services) Ms. Mary Dalton, Helena Qualifications (if required): none specified</p>	Director	5/31/2012

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2012 through July 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Health Coalition (Public Health and Human Services) cont. Ms. Kristianne Wilson, Billings Qualifications (if required): none specified	Director	5/31/2012
Rep. Edith J. Clark, Sweet Grass Qualifications (if required): none specified	Director	5/31/2012
Dr. Gary Mihelish, Helena Qualifications (if required): none specified	Director	5/31/2012
Ms. Jane Smilie, PO Box 202951 Qualifications (if required): none specified	Director	5/31/2012
Mr. Dave Pierce, Billings Qualifications (if required): none specified	Director	5/31/2012
Dr. Douglas Moore, Billings Qualifications (if required): none specified	Director	5/31/2012
Mr. Travis Hoffman, Missoula Qualifications (if required): none specified	Director	5/31/2012
Ms. Fawn Tadios, Box Elder Qualifications (if required): none specified	Director	5/31/2012
Ms. Karen Rizor, Ashland Qualifications (if required): none specified	Director	5/31/2012

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2012 through July 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Health Coalition (Public Health and Human Services) cont. Dr. Steve Helgerson, Helena Qualifications (if required): none specified	Director	5/31/2012
Montana Heritage Preservation and Development Commission (Commerce) Mr. F.W. Bill Howell, West Yellowstone Qualifications (if required): tourist facility manager	Governor	5/23/2012
Ms. Barbie Durham, Cameron Qualifications (if required): business person	Governor	5/23/2012
Montana Historical Society Board of Trustees (Historical Society) Mr. Steve Lozar, Polson Qualifications (if required): public member	Governor	7/1/2012
Ms. Katherine Lee, Glendive Qualifications (if required): public member	Governor	7/1/2012
Mr. Kent Kleinkopf, Missoula Qualifications (if required): public member	Governor	7/1/2012
Montana Noxious Weed Management Advisory Council (Agriculture) Ms. Jennifer Anderson, Livingston Qualifications (if required): representative of the Sportsman/Wildlife Group	Director	6/30/2012
Mr. Cantalupo Nico, Baker Qualifications (if required): At-Large representative	Director	6/30/2012

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2012 through July 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Montana Noxious Weed Seed Free Forage Advisory Council (Agriculture) Mr. Kenneth W. Smith, Kalispell Qualifications (if required): representing the livestock/agriculture industry</p>	Director	6/30/2012
<p>Montana Potato Commodity Advisory Committee (Agriculture) Mr. Bill Buyan, Sheridan Qualifications (if required): not specified</p>	Director	5/20/2012
<p>Mr. Art Mangels, Dillon Qualifications (if required): not specified</p>	Director	5/20/2012
<p>Petroleum Tank Release Compensation Board (Environmental Quality) Mr. Roy Morris, Butte Qualifications (if required): service station dealer</p>	Governor	6/30/2012
<p>Mr. Daniel Annala, Geysers Qualifications (if required): public member</p>	Governor	6/30/2012
<p>Postsecondary Scholarship Advisory Council (Office of Higher Education) Mr. LeRoy Schramm, Helena Qualifications (if required): having experience in postsecondary education</p>	Governor	6/20/2012
<p>Public Defender Commission (Administration) Ms. Majel Russell, Billings Qualifications (if required): member of organization advocating on behalf of racial minorities</p>	Governor	7/1/2012
<p>Mr. Charles Petaja, Helena Qualifications (if required): an attorney nominated by the State Bar</p>	Governor	7/1/2012

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2012 through July 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Public Defender Commission (Administration) cont. Mr. Terry Jessee, Billings Qualifications (if required): public representative nominated by the President of the Senate	Governor	7/1/2012
Research and Commercialization Technology Board (Commerce) Mr. Major Robinson, Billings Qualifications (if required): Native American representative	Governor	7/1/2012
Mr. Tom Tanner, Arlee Qualifications (if required): Native American representative	Governor	7/1/2012
State-Tribal Economic Development Commission (Commerce) Mr. Loren Stiffarm, Harlem Qualifications (if required): representative of the Fort Belknap Community	Governor	6/30/2012
Mr. Shawn Real Bird, Garryowen Qualifications (if required): representative of the Crow Tribe	Governor	6/30/2012
Mr. Russell Boham, Great Falls Qualifications (if required): representative of the Little Shell Band of Chippewa	Governor	6/30/2012
Ms. Delina Cuts The Rope, Harlem Qualifications (if required): representative of the Fort Belknap Community	Governor	6/30/2012
Mr. Randy Randolph, Havre Qualifications (if required): representative of the Little Shell Band of Chippewa	Governor	6/30/2012

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2012 through July 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>State-Tribal Economic Development Commission (Commerce) cont. Ms. Yolanda Old Dwarf, Crow Agency Qualifications (if required): representative of the Crow Tribe</p>	Governor	6/30/2012
<p>Mr. Gerald Gray, Billings Qualifications (if required): representative of the Little Shell Band of Chippewa</p>	Governor	6/30/2012
<p>Mr. Clarence Sivertsen, Belt Qualifications (if required): representative of the Little Shell Band of Chippewa</p>	Governor	6/30/2012
<p>Teachers' Retirement Board (Administration) Ms. Kari Peiffer, Kalispell Qualifications (if required): teacher/member</p>	Governor	7/1/2012
<p>Telecommunications Access Services for Person with Disabilities (Public Health and Human Services) Mr. Eric Eck, Helena Qualifications (if required): representative of the Public Service Commission</p>	Governor	7/1/2012
<p>Mr. Robert A. Ellesch, Great Falls Qualifications (if required): disabilities community representative</p>	Governor	7/1/2012
<p>Ms. Christy Keto, Havre Qualifications (if required): interLATA interexchange carrier</p>	Governor	7/1/2012
<p>Ms. Julia Saylor, Helena Qualifications (if required): disabilities community representative</p>	Governor	7/1/2012

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2012 through July 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Telecommunications Access Services for Person with Disabilities (Public Health and Human Services) cont. Ms. Pat McGlenn, Helena Qualifications (if required): largest local exchange company</p>	Governor	7/1/2012
<p>Tourism Advisory Council (Commerce) Ms. Cynthia Andrus, Bozeman Qualifications (if required): resident of Yellowstone Country</p>	Governor	7/1/2012
<p>Ms. Kim Holzer, Stanford Qualifications (if required): resident of Russell Country</p>	Governor	7/1/2012
<p>Ms. Beverly Harbaugh, Jordan Qualifications (if required): resident of Missouri River Country</p>	Governor	7/1/2012
<p>Ms. Jackie Yellowtail, Crow Agency Qualifications (if required): tribal representative and representative of Custer Country</p>	Governor	7/1/2012