

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 7

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 repeal of ARM |) | NOTICE OF PUBLIC HEARING ON |
| 2.21.215, 2.21.216, 2.21.217, |) | PROPOSED REPEAL |
| 2.21.221, 2.21.222, 2.21.223, |) | |
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| 2.21.228, 2.21.229, 2.21.230, |) | |
| 2.21.232, 2.21.234, and 2.21.241 |) | |
| pertaining to annual leave policy |) | |

TO: All Concerned Persons

1. On May 14, 2010, at 11:00 a.m., the Department of Administration will hold a public hearing in Room 136 of the Mitchell Building, at 125 N. Roberts, Helena, Montana, to consider the proposed 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 6, 2010, to advise us of the nature of the accommodation needed. Please contact Marjorie Thomas, Department of Administration, P.O. Box 200127, 125 N. Roberts, Helena, Montana 59620; telephone (406) 444-3982; fax (406) 444-0703; Montana Relay Service/TDD 711; or e-mail mthomas2@mt.gov.

3. The department proposes to repeal the following rules:

2.21.215 SHORT TITLE found at page 2-594 of the Administrative Rules of Montana (ARM).

AUTH: 2-18-604, MCA
IMP: 2-18-611, 2-18-612, 2-18-614, 2-18-615, 2-18-616, 2-18-617, 2-18-621,
MCA

2.21.216 DEFINITIONS found at ARM page 2-594.

AUTH: 2-18-604, MCA
IMP: 2-18-601, 2-18-611, 2-18-612, 2-18-614, 2-18-615, 2-18-616, 2-18-617, 2-18-621, MCA

2.21.217 POLICY AND OBJECTIVES found at ARM page 2-595.

AUTH: 2-18-604, MCA
IMP: 2-18-601, 2-18-611, 2-18-612, 2-18-614, 2-18-615, 2-18-616, 2-18-617, 2-18-621, MCA

2.21.221 ACCRUAL AND ELIGIBILITY TO USE VACATION LEAVE CREDITS
found at ARM page 2-596.

AUTH: 2-18-604, MCA
IMP: 2-18-611, 2-18-617, MCA

2.21.222 CALCULATING ANNUAL VACATION LEAVE CREDITS found at
ARM page 2-599.

AUTH: 2-18-604, MCA
IMP: 2-18-611, 2-18-612, 2-18-614, MCA

2.21.223 PAY PERIOD ACCRUAL OF VACATION LEAVE CREDITS found at
ARM page 2-601.

AUTH: 2-18-604, MCA
IMP: 2-18-611, 2-18-612, MCA

2.21.224 MAXIMUM ACCRUAL OF VACATION LEAVE CREDITS found at
ARM page 2-602.

AUTH: 2-18-604, MCA
IMP: 2-18-611, 2-18-617, MCA

2.21.226 RATE OF SALARY COMPENSATION found at ARM page 2-603.

AUTH: 2-18-604, MCA
IMP: 2-18-611, 2-18-612, MCA

2.21.227 VACATION LEAVE REQUESTS found at ARM page 2-603.

AUTH: 2-18-604, MCA
IMP: 2-18-616, MCA

2.21.228 VACATION LEAVE RECORDS found at ARM page 2-604.

AUTH: 2-18-604, MCA
IMP: 2-18-611, MCA

2.21.229 VACATION LEAVE ON HOLIDAYS found at ARM page 2-604.

AUTH: 2-18-604, MCA
IMP: 2-18-611, MCA

2.21.230 ABSENCE DUE TO ILLNESS OR A WORK-RELATED INJURY
found at ARM page 2-605.

AUTH: 2-18-604, MCA
IMP: 2-18-611, 2-18-615, MCA

2.21.232 LUMP-SUM PAYMENT UPON TERMINATION found at ARM page 2-605.

AUTH: 2-18-604, MCA
IMP: 2-18-617, 2-18-621, MCA

2.21.234 TRANSFERS found at ARM page 2-606.

AUTH: 2-18-604, MCA
IMP: 2-18-617, MCA

2.21.241 CLOSING found at ARM page 2-606.

AUTH: 2-18-604, MCA
IMP: 2-18-611, 2-18-612, 2-18-614, 2-18-615, 2-18-616, 2-18-617, 2-18-621, MCA

STATEMENT OF REASONABLE NECESSITY: The rules proposed to be repealed concern only the internal management of state government and do not affect the public. Therefore, the rules are not appropriately included in ARM, according to the definition of "rule" in 2-4-102(11)(b)(i), MCA. A revised annual leave policy for state employees will be included instead in the Montana Operations Manual, a document that addresses the internal management of state government.

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: Marjorie Thomas, Department of Administration, P.O. Box 200127, 125 N. Roberts, Helena, Montana 59620; telephone (406) 444-3982; fax (406) 444-0703; or e-mail mthomas2@mt.gov, and must be received no later than 5:00 p.m., May 14, 2010.

5. Marjorie Thomas, an attorney with the Department of Administration, 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 mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding State Human Resources Division rulemaking actions. 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.

7. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp>x. 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.

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

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 5, 2010.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM) NOTICE OF PUBLIC HEARING ON
2.21.305, 2.21.306, 2.21.307,) PROPOSED REPEAL
2.21.308, 2.21.309, 2.21.310,)
2.21.311, and 2.21.312 pertaining to)
disaster and emergency leave policy)

TO: All Concerned Persons

1. On May 14, 2010, at 10:30 a.m., the Department of Administration will hold a public hearing in Room 136 of the Mitchell Building, at 125 N. Roberts, Helena, Montana, to consider the proposed 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 6, 2010, to advise us of the nature of the accommodation needed. Please contact Marjorie Thomas, Department of Administration, P.O. Box 200127, 125 N. Roberts, Helena, Montana 59620; telephone (406) 444-3982; fax (406) 444-0703; Montana Relay Service/TDD 711; or e-mail mthomas2@mt.gov.

3. The department proposes to repeal the following rules:

2.21.305 SHORT TITLE found at page 2-625 of the Administrative Rules of Montana (ARM).

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

2.21.306 POLICY AND OBJECTIVES found at ARM page 2-625.

AUTH: 2-18-102, MCA
IMP: 2-18-102, 2-18-627, MCA

2.21.307 DEFINITIONS found at ARM page 2-626.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

2.21.308 DECLARED DISASTER OR EMERGENCY found at ARM page 2-626.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

2.21.309 PERSONAL DISASTER OR EMERGENCY OR VOLUNTEER SERVICE found at ARM page 2-627.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

2.21.310 AFFECTED WORK SITE CLOSURE found at ARM page 2-627.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

2.21.311 CLOSING found at ARM page 2-629.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

2.21.312 AMERICAN RED CROSS DISASTER SERVICE found at ARM page 2-629.

AUTH: 2-18-102, MCA
IMP: 2-18-627, MCA

STATEMENT OF REASONABLE NECESSITY: The rules proposed to be repealed concern only the internal management of state government and do not affect the public. Therefore, the rules are not appropriately included in ARM, according to the definition of "rule" in 2-4-102(11)(b)(i), MCA. A revised disaster and emergency leave policy for state employees will be included instead in the Montana Operations Manual, a document that addresses the internal management of state government.

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: Marjorie Thomas, Department of Administration, P.O. Box 200127, 125 N. Roberts, Helena, Montana 59620; telephone (406) 444-3982; fax (406) 444-0703; or e-mail mthomas2@mt.gov, and must be received no later than 5:00 p.m., May 14, 2010.

5. Marjorie Thomas, an attorney with the Department of Administration, 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 mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding State Human Resources Division rulemaking actions. 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.

7. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp.x>. 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.

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

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 5, 2010.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM) NOTICE OF PUBLIC HEARING ON
2.21.1801, 2.21.1802, 2.21.1803,) PROPOSED REPEAL
2.21.1811, 2.21.1812, and 2.21.1831)
pertaining to exempt compensatory)
time policy)

TO: All Concerned Persons

1. On May 14, 2010, at 11:30 a.m., the Department of Administration will hold a public hearing in Room 136 of the Mitchell Building, at 125 N. Roberts, Helena, Montana, to consider the proposed 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 6, 2010, to advise us of the nature of the accommodation needed. Please contact Marjorie Thomas, Department of Administration, P.O. Box 200127, 125 N. Roberts, Helena, Montana 59620; telephone (406) 444-3982; fax (406) 444-0703; Montana Relay Service/TDD 711; or e-mail mthomas2@mt.gov.

3. The department proposes to repeal the following rules:

2.21.1801 SHORT TITLE found at page 2-821 of the Administrative Rules of Montana (ARM).

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

2.21.1802 POLICY AND OBJECTIVES found at ARM page 2-821.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

2.21.1803 DEFINITIONS found at ARM page 2-821.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

2.21.1811 ADMINISTRATION OF EXEMPT COMPENSATORY TIME found at ARM page 2-825.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

2.21.1812 EXEMPT EMPLOYEES AND EXEMPT COMPENSATORY TIME
found at ARM page 2-825.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

2.21.1831 CLOSING found at ARM page 2-827.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The rules proposed to be repealed concern only the internal management of state government and do not affect the public. Therefore, the rules are not appropriately included in ARM, according to the definition of "rule" in 2-4-102(11)(b)(i), MCA. A revised annual leave policy for state employees will be included instead in the Montana Operations Manual, a document that addresses the internal management of state government.

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: Marjorie Thomas, Department of Administration, P.O. Box 200127, 125 N. Roberts, Helena, Montana 59620; telephone (406) 444-3982; fax (406) 444-0703; or e-mail mthomas2@mt.gov, and must be received no later than 5:00 p.m., May 14, 2010.

5. Marjorie Thomas, an attorney with the Department of Administration, 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 mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding State Human Resources Division rulemaking actions. 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.

7. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp.x>. 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.

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

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 5, 2010.

BEFORE THE BOARD OF HOUSING
DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 8.111.602 pertaining to the low) AMENDMENT
income housing tax credit program)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On May 15, 2010, the Board of Housing proposes to amend the above-stated rule.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Commerce no later than 5:00 p.m. on April 29, 2010, to advise us of the nature of the accommodation that you need. Please contact Paula Loving, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana, 59620-0528; telephone (406) 841-2840; fax (406) 841-2841; TDD (406) 841-2702; or e-mail plovling@mt.gov.

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

8.111.602 DEFINITIONS When used in these rules, unless the context clearly requires a different meaning:

(1) and (2) remain the same.

(3) "QAP" means the "Low Income Housing Qualified Allocation Plan–2010", as amended December 12, 2009, which sets forth the selection criteria used by the board for determining housing priorities and the allocation of tax credits for calendar year 2010, copies of which may be obtained by contacting the Board of Housing by mail at P.O. Box 200528, Helena, MT 59620-0528, by telephone at (406) 841-2845 or (406) 841-2838, or at the board's web site www.housing.mt.gov.

(4) remains the same.

AUTH: 90-6-106, MCA

IMP: 90-6-104, MCA

REASON: The Board of Housing is proposing the amendment to the rule to amend the years in which the plans are to be implemented.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Gerald Watne, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena,

Montana, 59620-0528; telephone (406) 841-2838; fax (406) 841-2841; or e-mail gewatne@mt.gov, and must be received no later than 5:00 p.m., May 13, 2010.

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 Gerald Watne at the above address no later than 5:00 p.m., May 13, 2010.

6. 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 25 persons based on the number of individuals who are interested in low income housing tax credits.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies 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/ G. MARTIN TUTTLE
G. MARTIN TUTTLE
Rule Reviewer

/s/ ANTHONY J. PREITE
ANTHONY J. PREITE
Director
Department of Commerce

Certified to the Secretary of State April 5, 2010.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

| | | |
|---|---|------------------------|
| In the matter of the amendment of ARM |) | NOTICE OF EXTENSION OF |
| 17.55.102, 17.55.108, 17.55.111, and |) | COMMENT PERIOD ON |
| 17.55.114 pertaining to definitions, facility |) | PROPOSED AMENDMENT, |
| listing, facility ranking, and delisting a |) | ADOPTION, AND REPEAL |
| facility on the CECRA priority list; adoption |) | |
| of New Rules I through V pertaining to |) | (CECRA REMEDIATION) |
| incorporation by reference, proper and |) | |
| expeditious notice, third-party remedial |) | |
| actions at order sites, additional remedial |) | |
| actions not precluded, and orphan share |) | |
| reimbursement; and repeal of ARM |) | |
| 17.55.101 pertaining to purpose |) | |

TO: All Concerned Persons

1. On October 15, 2009, the Department of Environmental Quality published MAR Notice No. 17-296 regarding a notice of public hearing on the proposed amendment, adoption, and repeal of the above-stated rules at page 1730, 2009 Montana Administrative Register, issue number 19. On November 12, 2009, the department published notification in the Montana Administrative Register that it was extending the public comment period until November 20, 2009, to provide interested persons additional time to comment.

2. In a letter dated November 16, 2009, a number of legislators requested that the department prepare an economic impact statement as provided for in 2-4-405, MCA. That statement was prepared by the department and sent to the Environmental Quality Council on February 16, 2010. The impact statement may be viewed at the department's web site at http://deq.mt.gov/StateSuperfund/PDFs/cecra_rules_ecis.pdf. In addition, a copy of the economic impact statement can be obtained from the department at the address contained in paragraph 3 below. Also, some commentors requested that the department prepare an economic impact statement on the rules and delay final adoption of the rules until the economic impact was considered. Because of the interest in the economic effect of the proposed rules, the department has determined that it will provide a supplemental comment period for the purpose of accepting written comments only on the economic impacts of the proposed rules and rule amendments.

3. Written data, views, or arguments pertaining to the economic impact of the proposed rules and rule amendments may be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901, faxed to (406) 444-4386, or e-mailed to ejohnson@mt.gov no later than May 14, 2010.

4. The department will make reasonable accommodations for persons with

disabilities who wish to participate in this rulemaking action 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 3, 2010, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

5. 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.

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

Reviewed by: DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ John F. North

JOHN F. NORTH

Rule Reviewer

BY: /s/ Richard H. Oppen

RICHARD H. OPPEN, Director

Certified to the Secretary of State, April 5, 2010.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

| | |
|--|-----------------------------|
| In the matter of the amendment of ARM) | NOTICE OF PUBLIC HEARING ON |
| 17.30.502, 17.30.619, 17.30.702,) | PROPOSED AMENDMENT |
| 17.30.1001, 17.36.345, 17.55.102,) | |
| 17.56.507, and 17.56.608 pertaining to) | (WATER QUALITY) |
| Department Circular DEQ-7) | (SUBDIVISIONS) |
|) | (CECRA) |
|) | (UNDERGROUND STORAGE |
|) | TANKS) |

TO: All Concerned Persons

1. On May 11, 2010, at 2:00 p.m., the Board of Environmental Review and the Department of Environmental Quality will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board and 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 3, 2010, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.30.502 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, and ARM Title 17, chapter 30, subchapters 6 and 7, apply throughout this subchapter:

(1) through (13) remain the same.

(14) The board adopts and incorporates by reference Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (~~February 2008~~ August 2010 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters. Copies of Department Circular DEQ-7 are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

17.30.619 INCORPORATIONS BY REFERENCE (1) The board adopts and incorporates by reference the following state and federal requirements and

procedures as part of Montana's surface water quality standards:

(a) Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (~~February 2008~~ August 2010 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters;

(b) through (2) remain the same.

AUTH: 75-5-201, 75-5-301, MCA

IMP: 75-5-301, MCA

17.30.702 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter (Note: 75-5-103, MCA, includes definitions for "degradation," "existing uses," "high quality waters," "mixing zone," and "parameter"):

(1) through (25) remain the same.

(26) The board adopts and incorporates by reference:

(a) Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (~~February 2008~~ August 2010 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters;

(b) through (d) remain the same.

AUTH: 75-5-301, 75-5-303, MCA

IMP: 75-5-303, MCA

17.30.1001 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter:

(1) remains the same.

(2) "DEQ-7" means Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (~~February 2008~~ August 2010 edition), which establishes water quality standards for toxic, carcinogenic, radioactive, bioconcentrating, nutrient, and harmful parameters.

(a) The board adopts and incorporates by reference Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (~~February 2008~~ August 2010 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-301, 75-5-401, MCA

17.36.345 ADOPTION BY REFERENCE (1) For purposes of this chapter, the department adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

(a) through (d) remain the same.

(e) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (~~February 2008~~ August 2010 edition);

(f) through (2) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

17.55.102 DEFINITIONS In this subchapter the following terms have the meanings indicated below and are supplemental to the definitions in 75-10-701, MCA:

(1) through (5)(c) remain the same.

(6) The department adopts and incorporates by reference Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (~~February 2008~~ August 2010 edition).

AUTH: 75-10-702, MCA

IMP: 75-10-702, 75-10-704, MCA

17.56.507 ADOPTION BY REFERENCE (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (~~February 2008~~ August 2010);

(b) through (3) remain the same.

AUTH: 75-11-319, 75-11-505, MCA

IMP: 75-11-309, 75-11-505, MCA

17.56.608 ADOPTION BY REFERENCE (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (~~February 2008~~ August 2010);

(b) through (3) remain the same.

AUTH: 75-11-319, 75-11-505, MCA

IMP: 75-11-309, 75-11-505, MCA

REASON: The board is proposing the amendment of Montana's water quality rules in ARM 17.30.502, 17.30.619, 17.30.702, and 17.30.1001, to incorporate proposed revisions to Montana's numeric water quality standards contained in Department Circular DEQ-7 (February 2008 edition). The proposed revisions to the Circular fall into five categories: (1) adopt new surface and ground water standards for nineteen pesticides and associated metabolites, recently detected in Montana's ground water; (2) adopt new and revised aquatic life standards for five chemicals in order to be consistent with the U.S. Environmental Protection Agency's (EPA's) nationally-recommended water quality criteria promulgated under Section 304(a) of the federal Clean Water Act; (3) adopt new or revised human health standards for eleven pollutants in order to be consistent with EPA's recent promulgation of new or revised 304(a) criteria for these pollutants; (4) adopt a frequency and duration component applicable to all numeric aquatic life standards in Department Circular DEQ-7; and (5) generally revise the introduction to Department Circular DEQ-7 and clarify footnotes.

In this rulemaking, the department is proposing to amend ARM 17.36.345, regarding subdivisions, ARM 17.55.102, implementing the Comprehensive Environmental Cleanup and Responsibility Act (CECRA), and ARM 17.56.507 and 17.56.608, implementing the underground storage tank statutes, in order to incorporate the board's revisions to Department Circular DEQ-7. These amendments are necessary to ensure that the department's programs for the regulation of water quality affected by remediation sites, underground storage tanks, and subdivisions will use the most current version of Montana's numeric water quality standards adopted by the board.

The revisions to Department Circular DEQ-7, and the reasons for them, are summarized below. Copies of Department Circular DEQ-7, with the proposed revisions, may be obtained by contacting Rod McNeil at Water Quality Planning Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901, by phone at (406) 444-5361, or by e-mail at rmcneil@mt.gov, or may be obtained on-line at <http://www.deq/mt.gov/wqinfo/Standards>.

INTERIM STANDARDS FOR PESTICIDES

The board is proposing to adopt numeric water quality standards for nineteen pesticides and associated metabolites that were recently detected in ground water by the Montana Department of Agriculture. These pesticides and metabolites are agricultural chemicals that have no federally-promulgated standards adopted by EPA for the protection of water quality. Pursuant to 80-15-201(3), MCA, the board is required to adopt an "interim numerical standard" for ground water when there is no federally promulgated or published standard for an agricultural chemical that has been detected in Montana's ground water. The board is also required to review the interim standard whenever EPA promulgates a standard for the agricultural chemical at issue. 80-15-201(3), MCA.

The department, in conjunction with EPA, has developed interim standards for the following pesticides and metabolites detected in Montana's ground water in 2008-2009: Flurcarbazon; Flurcarbazon sulfonamide; Imazapic; Pyrasulfatole; Sulfometuron,methyl; Aminopyralid; Azinphos,methyl; Azinphos,methyl oxon; Difenoconazole; Dimethenamid; Dimethenamid OA; Ethion; Ethofumesate; Fenbuconazole; Imazalil; Imazethapyr; Propicanazole; Prosulfuron; Sulfosulfuron; Tebuconazole; and Imidacloprid.

The levels set in the interim standards are determined in a two-stage process. First, the department reviews the literature and does preliminary calculations to determine a level that is protective of human health based on the available scientific literature. A determination as to whether a compound is toxic or carcinogenic is derived from the Chemical Index list available at www.toxnet.nlm.nih.gov or from the Integrated Risk information System (IRIS) of the EPA. The Health Advisory (HA) is calculated using a Chronic Reference Dose (RfD) or the oral cancer slope factor, if one has been established. If an appropriate RfD is identified in IRIS or by the EPA toxicologist, a Relative Source Contribution (RSC) is also used. The purpose for the RSC is to take into account all environmental sources of input, such as drinking water, food, and air. In the second step, the scientific references selected for these calculations are submitted to the EPA,

Region 8, for further review by its toxicologist. If a pesticide is defined as carcinogenic, the appropriate cancer slope index is used along with a risk factor of 1×10^{-5} (1 in 100,000) to produce a final recommendation for the interim standard. The EPA has reviewed the standards and has determined that they are protective of public health. EPA's letter approving the standards and supporting documentation used to establish the standards are available from the department.

The board finds that modifying Department Circular DEQ-7, to adopt interim standards for the above-listed pesticides and metabolites, is necessary in order to fulfill its statutory obligation to establish ground water standards for agricultural chemicals that have been detected in Montana's ground water. The board also finds that it is necessary and reasonable to adopt interim standards for surface waters that address these same pesticides and metabolites. The board could choose to adopt only ground water standards and thereby meet the requirements of state law, but rejects that alternative as inconsistent with the policy of the state to "protect and maintain" all state waters, both surface and ground water. By adopting standards for surface waters, as well as ground waters, Montana's surface waters will receive the same protection as ground water whenever state law mandates a ground water standard for an agricultural chemical.

AQUATIC LIFE STANDARDS

(a) New standards: The board is proposing to adopt a single new aquatic life standard in Department Circular DEQ-7, in response to EPA's recent promulgation of nationally-recommended aquatic life criteria for acrolein. Although EPA's promulgation of recommended criteria under 304(a) of the Clean Water Act does not impose any legal obligation on states and tribes to adopt the recommended criteria, states and tribes are encouraged to use the criteria as guidance in the adoption of their water quality standards. The EPA review process considers numerous aquatic species in tests to arrive at its conclusions as to the species which is most sensitive to a given pollutant. These scientific reviews may take as long as ten years to conduct and the documents generated describing the selected specie and the testing used is lengthy. The standard is then set to protect these species. The Federal Register cites the interim and final Toxicological Profile Reports for each compound, which has a standard adopted into National Recommended Water Quality Criteria (NRWQC). For acrolein the FR citations are 74 FR 27535 and 74 FR 46587.

The board finds it is reasonable and necessary to adopt these aquatic life standards for acrolein based upon EPA's recommended criteria, because the board does not have the resources necessary to develop aquatic life standards for the state of Montana. In order to ensure that aquatic life in Montana's surface waters are protected from the toxic effects of these chemicals, the board finds it necessary to use EPA's recommended criteria as the scientific basis for adopting standards that ensure the protection of aquatic life from adverse effects.

(b) Revised standards: The board is proposing to revise the aquatic life standards currently adopted in Department Circular DEQ-7 for Chlordane, Endrin, Heptachlor, Endosulfan I, Endosulfan II, and pp-dichlorodiphenyltrichloroethane in

order to make those standards consistent with all of the other aquatic life standards currently adopted in Circular DEQ-7. The aquatic life standards for these six compounds are based upon EPA's 1980 method of establishing criteria that can never be exceeded at any time and at any place. In distinction, all of the other acute aquatic life standards currently adopted in Circular DEQ-7 for organic compounds are based upon EPA's 1985-method of incorporating a magnitude, duration (one-hour averaging period), and frequency of allowable exceedances (once-every-three-years) as an integral component of acute aquatic standards (EPA PB85-227049). In order to maintain consistency in the interpretation and application of all of the aquatic life standards listed in Circular DEQ-7, the board is proposing to revise the not-to-be-exceeded acute aquatic life standards for Chlordane, Endrin, Endosulfan I, Heptachlor, Endosulfan II, and pp-dichlorodiphenyltrichloroethane to be consistent with EPA's 1985 method. This revision to Circular DEQ-7 will require that the existing acute standards for these five compounds be divided by a factor of two, which results in a 50% reduction of the current standards for these compounds. This was done to provide a greater safety margin in the standard. The 1980 standards did not allow any exceedances, while the 1985 change for these five compounds allows one exceedance in a three year period, on average. Thus the lower levels are to provide greater protection for aquatic life since occasional exceedances are allowed. Please note that a seventh compound is addressed by the EPA in this 1985 revision: silver. As a metal, the measure of silver is strongly affected by such influences as hardness, a factor not true of any of the other chemicals in this revision group. The board feels that further consideration should be given to this element in lowering the standard and further discussions with stakeholders are necessary prior to alteration of the existing standard. The board finds it reasonable and necessary to adopt these revisions to Circular DEQ-7 to make the application of these six acute aquatic life standards consistent with all of the other aquatic life standards for organic compounds listed in Circular DEQ-7.

The board is proposing to correct an error related to the aquatic life listing for Endosulfan sulfate. Previous versions of DEQ-7 have listed an aquatic life standard, where no national standard has yet been derived. The board proposes to eliminate the acute and chronic aquatic life values in DEQ-7 for Endosulfan sulfate until such time as scientific information from the EPA or other sources allows calculation of such standards. The board finds it reasonable and necessary to adopt this revision to correct this error and to ensure DEQ-7 is consistent with EPA National Recommended Water Quality Criteria.

HUMAN HEALTH STANDARDS

The board is proposing to adopt five new human health standards for Chlorodibromomethane, Delta Hexachlorocyclohexane, Nitrosamines, Nitrosodibutylamine, and Nitrosodiethylamine. In addition, the board is proposing to revise the human health standards currently listed in Department Circular DEQ-7 for: Acrolein; Dinitrotoluene, 2,4-; Endosulfan; Trichlorophenol, 2,4,5-; Acrylonitrile; and Barium. These new and revised human health standards are being proposed in response to EPA's new and revised human health-based criteria promulgated under

section 304(a) of the federal Clean Water Act. Specifically, EPA published an updated list of nationally-recommended water quality criteria for human health in November 2009, using new data, information, and scientific research.

The board finds it is reasonable and necessary to adopt these new or revised human health standards based upon EPA's recommended criteria, because the board does not have the resources necessary to develop human health standards using state-sponsored research. In order to ensure that the quality of state waters protects public health, the board finds it necessary to use EPA's recommended criteria as the scientific basis for adopting standards that ensure the protection of human health from adverse affects. For the compounds listed above that are carcinogens, the board is using EPA's recommended criteria to establish human health standards based on a risk level of 1×10^{-5} , as required by 75-5-301(2)(b)(i), MCA.

FREQUENCY, MAGNITUDE, AND DURATION OF STANDARDS

The board is proposing to incorporate a frequency and duration component to aid in the accurate application of the aquatic life standards listed in Department Circular DEQ-7 by revising Footnotes 3, 4, and 16. The board is proposing this revision to be consistent with EPA's interpretation of the nationally-recommended criteria for aquatic life.

Specifically, EPA interprets the national aquatic life criteria as including three components: magnitude, frequency, and duration. "Magnitude" refers to the highest concentration of a pollutant (such as lead) that can occur without adverse effects. These values are the numeric aquatic life standards listed in Department Circular DEQ-7. "Frequency" refers to the number of times within a defined period that a standard may be exceeded without adverse effects. For both acute and chronic aquatic life standards, EPA recommends that the frequency of an exceedance be limited to once in a three-year cycle. The term "duration" refers to the period of time that a standard may be exceeded within the three-year cycle without adverse effects. The period of time recommended by EPA is a one-hour period for an exceedance of an acute standard and 96 hours for an exceedance of a chronic standard. The fixation of a frequency and duration allows inter-comparison with the scientific data used to create the standard, as well as inter-comparison between locations using the same procedures. In distinction, there is no period of time or frequency that a human health standard may be exceeded.

In order to incorporate EPA's recommended frequency and duration components, the board finds it necessary to revise the three footnotes described below in order to separately address the interpretation and implementation of the following standards: (1) acute aquatic life standards; (2) chronic aquatic life standards; and (3) human health standards.

Footnote 3: The board is revising Footnote 3 to eliminate its former application to all surface and ground water standards. As revised, Footnote 3 now applies only to Montana's acute aquatic life standards. The revised language limits the frequency of allowable exceedances to an acute standard to one occurrence during a three-year period. The proposed revision also defines the duration of the

exceedance to be a one-hour averaging period.

Footnote 4: The board is revising Footnote 4 to eliminate its former application to all surface and ground water standards. As revised, Footnote 4 now applies only to Montana's chronic aquatic life standards. The revised language limits the frequency of allowable exceedances to a chronic standard to one occurrence during a three-year period. The proposed revision also defines the duration of the exceedance to be a 96-hour averaging period.

Footnote 16: The board is revising Footnote 16 to eliminate its former application to aquatic life standards and also delete its explanation of EPA's "total recoverable" analysis. Since Footnote 9 currently contains an explanation of the "total recoverable" analysis, the explanation in Footnote 16 is duplicative and not necessary.

In addition, the board is revising Footnote 16 so that it now applies only to Montana's human health standards. This revision is necessary because the "not-to-be-exceeded" language that currently applies to the human health standards in Footnotes 3 and 4 is being revised to allow a frequency of exceedance and duration component. Since the board is not proposing a similar frequency of exceedance and duration component for human health standards, the board is amending Footnote 16 to specify that human health standards cannot be exceeded.

GENERAL REVISIONS TO THE INTRODUCTION, FOOTNOTES, AND FORMAT OF DEPARTMENT CIRCULAR DEQ-7

Introduction: The board is proposing to generally revise the introduction to Department Circular DEQ-7 to provide a clearer description of the sources of information used to develop the numeric standards and also provide a more comprehensive explanation of the terms used throughout the Circular. Although portions of the revised introduction explain that the aquatic life standards will now include a frequency and duration component (assuming the proposed amendments of Footnotes 3 and 4 are adopted), the remaining revisions to the introduction are not substantive changes. Consequently, except for the explanation of frequency and duration, the proposed revisions to the introduction will not change the interpretation or implementation of the numeric water quality standards listed in Department Circular DEQ-7.

Footnote 2: The board is revising Footnote 2 to improve clarity by eliminating a redundant reference to carcinogens.

Footnote 9: The board is modifying Footnote 9 to incorporate EPA's updated method of analyzing samples for metals using the "total recoverable" method. This revision is necessary to be consistent with EPA's current method of analysis.

Footnote 17: The board is deleting the reference to "NRWQC" in Footnote 17, because it is duplicative of the specific sources of pollutant criteria included in that footnote (i.e., priority, non-priority, and organoleptic pollutants), which are used to identify the source of each water quality standard listed in Department Circular DEQ-7. Since the term "NRWQC" (i.e., National Recommended Water Quality Criteria) is a general term that includes the three separate categories of pollutant criteria used throughout the Circular, the inclusion of "NRWQC" in the footnote is

unnecessary.

Format: The format of Department Circular DEQ-7 is being revised so that information in the document can be easily accessed by conventional search engines. This formatting revision required consolidating synonyms for the same compound, removing organizational names from the second column and updating certain chemical industry numbers so that the Circular can now be searched using the chemical industry numbers (CASRN, NIOSH, or SAX) or by synonym. These changes are necessary to improve public access to the information in the circular.

4. With this notice, the board is also soliciting comment from all interested persons on any aspect of Montana's water quality standards that a person believes the board should consider for potential revision.

The comment should identify the water quality standard at issue, any suggested revision to the standard, and the basis for the suggested revision, including technical information or reports supporting the revision. In addition, the board is specifically soliciting comment on the numeric standards for electrical conductivity (EC) and sodium adsorption ratio (SAR) adopted in 2003 and subsequent revision to the nondegradation requirements for EC and SAR adopted in 2006. Comments on EC and SAR should identify the specific standard at issue, any suggested revision to the standard and the basis for the revision, including technical information or reports supporting the revision. Interested persons are encouraged to submit any new data, information, or scientific literature that became available after the board's adoption of water quality standards for EC and SAR in 2003.

Copies of some of the post-2003 reports and scientific literature pertaining to EC and SAR are available at www.deq.mt.gov/coalbedmethane/cbm_water_quality.mcp. The documents on the web site are not intended to be a complete list, but are provided to facilitate public comment. When feasible, documents will be added to the web site as they are identified by interested persons. The public hearing scheduled for the proposed amendment of rules incorporating Department Circular DEQ-7 does not include a hearing on the board's request for comments on any aspect of Montana's water quality standards, including EC and SAR. If the board decides to pursue revisions not described in paragraph 3, based on the comments received, the board will initiate a new rulemaking, which will include a hearing and opportunity to submit oral and written comments.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing regarding the proposed rule amendments and changes to Department Circular DEQ-7, at the hearing. Written data, views, or arguments regarding the rule amendments and changes to Department Circular DEQ-7 also may be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., June 1, 2010. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

Comments regarding the triennial review of water quality standards should be submitted in writing to Rod McNeil, Planning, Prevention and Assistance Division,

Water Quality Standards Section, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-6836; or e-mailed to rmcneil@mt.gov, no later than 5:00 p.m., June 1, 2010.

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

7. The board and department maintain a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water 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 the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov; or may be made by completing a request form at any rules hearing held by the board or department.

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

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

DEPARTMENT OF ENVIRONMENTAL
QUALITY

BY: /s/ Richard H. Opper
RICHARD H. OPPER, Director

Certified to the Secretary of State, April 5, 2010.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.38.201A, 17.38.203, 17.38.206,)
17.38.216, 17.38.234, and 17.38.239)
pertaining to incorporation by reference,)
maximum inorganic chemical)
contaminant levels, maximum)
radiological contaminant, chemical and)
radiological quality samples, testing and)
sampling records and reporting)
requirements and public notification for)
community and noncommunity supplies)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

(PUBLIC WATER AND SEWAGE
SYSTEM REQUIREMENTS)

TO: All Concerned Persons

1. On May 11, 2010, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules. In addition, the department will hold an informal question/answer session at 1:00 p.m., at the same address, to answer questions regarding those proposed amendments.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., May 3, 2010, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.38.201A INCORPORATION BY REFERENCE--PUBLICATION DATES AND AVAILABILITY OF REFERENCED DOCUMENTS (1) Unless expressly provided otherwise, in this subchapter where the board has adopted and incorporated by reference a federal regulation, the reference is to the July 1, ~~2007~~ 2009, edition of the Code of Federal Regulations (CFR).

(2) through (4) remain the same.

AUTH: 75-6-103, MCA
IMP: 75-6-103, MCA

REASON: The proposed amendment to ARM 17.38.201A(1) updates the incorporation by reference rule to adopt the newest edition of the Code of Federal

Regulations (CFR). As a condition of primacy, the department may not have rules that are less stringent than comparable federal requirements. The proposed amendment is necessary to conform the state rules to current federal requirements.

Changes from the 2007 to the 2009 editions of the CFR are not extensive. One substantive change addresses alternative testing methods. For each regulated contaminant, EPA specifies in rule an approved testing method. In order to expedite the ability of regulated systems to utilize new methods, EPA adopted Appendix A to Subpart C of Part 141: Alternative Testing Methods Approved for Analyses Under the Safe Drinking Water Act. The 2009 edition of the CFR adds approximately 25 new or modified methods that regulated systems may use to conduct contaminant analysis.

The 2009 edition of the CFR also includes new requirements for aircraft drinking water. Because EPA has not given the state primacy to enforce these requirements, they are not incorporated in this rulemaking.

The remainder of the changes in the 2009 edition of the CFR affect the formatting of the rules and tables and are not substantive.

17.38.203 MAXIMUM INORGANIC CHEMICAL CONTAMINANT LEVELS

(1) The board adopts and incorporates by reference:

(a) through (c) remain the same.

(d) 40 CFR 141.80(c), ~~as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007)~~, which sets forth the action levels for lead and copper.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendment would remove an unnecessary reference to the Federal Register. The Federal Register was referenced in order to incorporate modifications to the federal rules that were final but not yet published in the CFR. The 2009 edition of the CFR contains those modifications, so the reference to the Federal Register is no longer necessary.

17.38.206 MAXIMUM RADIOLOGICAL CONTAMINANT (1) The board ~~hereby~~ adopts and incorporates by reference 40 CFR ~~141.15, 141.16, and~~ 141.66(b), (c), (d), (e), and (f), which set forth maximum contaminant levels for radiological contaminants.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendment would remove a reference to two federal rule sections that no longer exist. The proposed amendment does not have any substantive effect, and is necessary to eliminate incorrect references from the state rules.

17.38.216 CHEMICAL AND RADIOLOGICAL QUALITY SAMPLES

(1) through (2) remain the same.

(3) The board adopts and incorporates by reference the following monitoring and analytical requirements:

(a) through (j) remain the same.

(k) 40 CFR 141.80, ~~as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007)~~, which sets forth general requirements for the control of lead and copper;

(l) 40 CFR 141.86, ~~as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007)~~, which sets forth sampling and analytical method requirements for lead and copper;

(m) 40 CFR 141.87, ~~as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007)~~, which sets forth sampling requirements for water quality parameters;

(n) 40 CFR 141.88, ~~as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007)~~, which sets forth sampling requirements for lead and copper in source water;

(o) 40 CFR 141.89, ~~as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007)~~, which sets forth analytical method requirements for lead, copper, and water quality parameters;

(p) through (5) remain the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: See the Reason statement for the amendment to ARM 17.38.203.

17.38.234 TESTING AND SAMPLING RECORDS AND REPORTING REQUIREMENTS (1) through (5) remain the same.

(6) The board adopts and incorporates by reference the following:

(a) through (c) remain the same.

(d) 40 CFR 141.75, which sets forth reporting requirements for public water supplies that use surface water or GWUDISW, ~~except for the following changes that, for the purposes of this subchapter:~~

~~(i) "5 NTU" means 5.0 nephelometric turbidity units for the purposes of this subchapter; and~~

~~(ii) "not detected" with respect to residual chlorine concentration means less than 0.20 by the DPD method, or 0.10 by the amperometric titration method for the purposes of this subchapter.;~~

(e) remains the same.

(f) 40 CFR 141.90 and 141.91, ~~as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007)~~, which set forth reporting and recordkeeping requirements for lead and copper;

(g) through (9) remain the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendment to ARM 17.38.234(6)(d) would delete the numeric value associated with the term "not detected." The board has already made this change to the substantive provisions of ARM 17.38.208 and 17.38.225. This amendment is necessary to make the reporting requirements in this rule consistent with the substantive provisions, as well as to conform the state rules to

comparable federal requirements. The proposed amendment to ARM 17.38.234(6)(f) would remove an unnecessary reference to the Federal Register. See the Reason statement for the amendment to ARM 17.38.203.

17.38.239 PUBLIC NOTIFICATION FOR COMMUNITY AND NONCOMMUNITY SUPPLIES (1) and (2) remain the same.

(3) The board adopts and incorporates by reference 40 CFR Part 141.85, ~~as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007)~~, which sets forth the public education and supplemental monitoring requirements for exceedances of the lead action level.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendment would remove an unnecessary reference to the Federal Register. See the Reason statement for the amendment to ARM 17.38.203.

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

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

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

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

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden

JAMES M. MADDEN
Rule Reviewer

BY: /s/ Joseph W. Russell

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

Certified to the Secretary of State, April 5, 2010.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

| | |
|--|--------------------|
| In the matter of the amendment of ARM) | NOTICE OF PROPOSED |
| 17.50.403 and 17.50.410 pertaining to) | AMENDMENT |
| definitions and annual operating license) | |
| requirements) | (SOLID WASTE) |
|) | |
|) | NO PUBLIC HEARING |
|) | CONTEMPLATED |

TO: All Concerned Persons

1. On May 15, 2010, the Board of Environmental Review proposes to amend the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., May 3, 2010, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.50.403 DEFINITIONS Unless the context requires otherwise, in this subchapter the following definitions apply:

(1) through (5) remain the same.

(6) "Contaminated soil" means soil, rocks, dirt, or earth that has been made impure by contact, commingling, or consolidation with organic compounds such as petroleum hydrocarbons. ~~The term~~ This definition does not include soils contaminated solely by inorganic metals, ~~or soils that meet the definition of hazardous waste under ARM 17.54.204~~ Title 17, chapter 53, or regulated PCB (polychlorinated biphenyls) contaminated soils.

(7) through (12) remain the same.

(13) "Interim closure" means the period of time from the department's receipt of the certification required in ARM ~~17.50.530(1)(h)~~ 17.50.1403(10) until the department ~~verifies closure compliance under ARM 17.50.530~~ approves that certification.

(14) through (54) remain the same.

AUTH: 75-10-106, 75-10-115, 75-10-204, 75-10-221, MCA

IMP: 75-10-115, 75-10-221, MCA

17.50.410 ANNUAL OPERATING LICENSE REQUIRED (1) through (6)(c)

remain the same.

(7) ~~Fees at a facility in interim closure must be held in abeyance by the department. Once a facility is in interim closure, the duty of its owner or operator to pay license fees is suspended.~~ If the department determines, pursuant to ARM 17.50.530 17.50.1403(10), that ~~not to approve certification of closure was not completed in compliance with the closure plan,~~ the owner or operator shall pay to the department the suspended fees held in abeyance to the department. An owner or operator of a facility for which the department has determined by the department not to have completed closure in compliance with the facility's closure plan approve certification of closure shall, after the owner or operator believes that closure has been completed in compliance with the closure plan, submit a new certification as ~~required in under ARM 17.50.530(1)(h)~~ 17.50.1403(10). The facility is then again in interim closure, pending re-inspection and ~~verification of closure compliance approval of closure certification~~ by the department.

Tables 1 through 3 remain the same.

AUTH: 75-10-106, 75-10-115, 75-10-204, 75-10-221, MCA

IMP: 75-10-115, 75-10-204, 75-10-221, MCA

REASON: The board is proposing to amend the definition of "contaminated soil" in ARM 17.50.403(6), which excludes soils that meet the definition of hazardous waste under the department's hazardous waste rules. The current definition cites a Department of Environmental Quality hazardous waste program rule, ARM 17.54.201, that the department repealed in 2001, at p. 169, 2001 Montana Administrative Register, Issue Number 2. At that time, the department adopted new hazardous waste rules, and one of those rules, ARM 17.53.301, incorporates by reference a regulation of the U.S. Environmental Protection Agency, 40 CFR 260.10, that defines the contaminated soils that constitute hazardous waste. It is necessary to amend the citation in ARM 17.50.403(6) so that it refers to the current hazardous waste rules.

Although the board has been delegated the authority to adopt solid waste management system fee rules, the department has been delegated the authority, pursuant to Section 75-10-204, MCA, to adopt other types of rules governing solid waste management systems. In a recent rulemaking, the department added a definition of "contaminated soil" to its solid waste rules, at ARM 17.50.502(8). This definition explicitly excludes soils contaminated by polychlorinated biphenyls (PCBs). Because the board's fee rules establish fees for activities governed by the department's solid waste rules, the board is also proposing to amend the definition of "contaminated soil" in ARM 17.50.403(6) to conform it to the definition of "contaminated soil" in amended department rule ARM 17.50.502(8), by excluding soils contaminated by PCBs.

In its recent solid waste rulemaking, the department also repealed ARM 17.50.530, which concerned closure of a landfill unit. ARM 17.50.403(13) and 17.50.410(7) contain cross-references to ARM 17.50.530(1)(h), which concerned certification of closure completion by an owner or operator and verification of closure completion by the department. The department replaced ARM 17.50.530(1)(h) with new ARM 17.50.1403(10). Therefore, the board is proposing to amend ARM

17.50.403(13) and 17.50.410(7) to correct the outdated citation.

ARM 17.50.410(7) requires the department to hold fees in abeyance when a solid waste management facility is in interim closure. Because the phrase "held in abeyance" may be unclear, the board is proposing to amend that subsection to substitute "suspended" for "held in abeyance." The use of "suspended" would clarify that the duty of an owner or operator to pay license fees is suspended once a facility is in interim closure.

The board is proposing to make minor editorial revisions for clarity that are not intended to change the meaning of the rules.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov, no later than May 13, 2010. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov, no later than May 13, 2010.

6. If the board receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 7 based on the 71 licensees in Montana.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this entity. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; 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 at Department of Environmental Quality, P.O. Box 200901, Helena,

Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ David Rusoff
DAVID RUSOFF
Rule Reviewer

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

Certified to the Secretary of State, April 5, 2010.

BEFORE THE BOARD OF BARBERS AND COSMETOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.121.301 definitions,)
24.121.1509 implements and)
equipment, 24.121.2101 continuing)
education, and 24.121.2301)
unprofessional conduct)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 10, 2010, at 10:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendments of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Barbers and Cosmetologists (board) no later than 5:00 p.m., on May 6, 2010, to advise us of the nature of the accommodation that you need. Please contact Shane Younger, Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2335; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdcos@mt.gov.

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

24.121.301 DEFINITIONS The following definitions shall apply as used in this chapter:

(1) "Approved electrical appliances" are any electrical appliances that assist in the performance of services under the defined esthetics scope of practice.

(1) through (16) remain the same but are renumbered (2) through (17).

(18) "Hour" of education is equal to 50 minutes of instructional time.

(17) through (25) remain the same but are renumbered (19) through (27).

(28) "Trade show" is a show or class which offers specific product knowledge, product information, product sales, or retail of product.

(26) and (27) remain the same but are renumbered (29) and (30).

AUTH: 37-1-131, 37-1-319, 37-31-203, MCA

IMP: 37-1-306, 37-31-101, 37-31-203, 37-31-204, 37-31-303, 37-31-305, 37-31-309, 37-31-311, MCA

REASON: It is reasonably necessary to amend this rule and define "approved electrical appliances" as used in the esthetics definition at 37-31-101(6), MCA. The

full board recently concluded that licensees should be responsible to utilize only those machines that are within the scope of their specific licensed practice. This definition will clarify this condition for estheticians and aligns with proposed amendments to ARM 24.121.1509 and 24.121.2301 to further implement the board's decision.

Following a recent review of the continuing education rule, the board is proposing several amendments to ARM 24.121.2101 in this notice. The board is adding definitions of "hour" and "trade show" to this rule to clearly delineate these terms used in the amendments and align with the other proposed rule changes.

24.121.1509 IMPLEMENTS, INSTRUMENTS, SUPPLIES, AND EQUIPMENT (1) ~~The board shall approve all new machines and devices which utilize newly introduced technology and are used in the practice of barbering, cosmetology, electrology, esthetics, or manicuring prior to the use of such machines and devices by licensees~~ It is the responsibility of all licensees to ensure that the machines and devices they are using fall within their scope of practice.

(2) and (3) remain the same.

(4) ~~All microdermabrasion machines must be approved by the board prior to their use by licensees and only~~ Only microdermabrasion machines specifically manufactured for use in esthetics services ~~and approved by the board~~ are permitted. Modified or medical machines may not be used.

(a) through (ii) remain the same.

(iii) used only in accordance with specific manufacturer directions with the exception of plastic tips, which are single use items that require disposal after a one time use.

(5) through (10) remain the same.

(11) The use of any teeth whitening products is prohibited.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-1-131, 37-31-203, 37-31-204, MCA

REASON: The board is amending (1) and (4) of this rule to remove the requirement for the board to approve all new machines for licensee use. The board has found that this approval process requires an inordinate amount of staff and board time, and has even required the board to consult with outside medical practitioners during the process. Therefore, the board recently decided that licensees should be responsible to utilize only those machines that are within the scope of their specific licensed practice.

The board is amending (4)(a)(iii) to clarify that plastic tips are not reusable, regardless of any different information contained in the manufacturer's directions for a specific microdermabrasion machine. The rule already specifies in (6) that only single use plastic tips are allowed in microdermabrasion services and the board is amending (4) to remove any potential conflict between the two sections.

The board is adding (11) to this rule to clearly delineate the board's intent to prohibit the use of teeth whitening products by its licensees. The board has recently received numerous complaints regarding licensees under this board's jurisdiction performing such services. Following discussion at several board meetings and

review of the statutes defining the practices licensed by the board, the full board concluded that teeth whitening is not within the scope of practice of any board licensee. Further, the board acknowledged that teeth whitening is within the scope of practice of licensed dentists. The board is adding (11) to make this determination clear in rule and eliminate any confusion among licensees or the public.

Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

24.121.2101 CONTINUING EDUCATION - INSTRUCTORS/INACTIVE INSTRUCTORS (1) Active instructors shall complete 30 hours of board-approved continuing education (CE) per renewal period to maintain active status licensure.

~~(2) The board may approve, on a case-by-case basis, CE courses offered by providers not currently recognized by the board or not offered through attendance at an accredited academic college or university before credits are granted to any licensee for such course.~~

~~(3) (2) Courses taught via distance education must first be certified through an agency or organization approved by the board that certifies each course's instructional design and delivery before credits are granted to any licensee for such course approved by the board.~~

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

~~(5) (4) Requests for approval of CE courses for providers or subject matter not currently recognized by the board must be submitted on the appropriate form must be made on forms approved by the board or its designee.~~

~~(6) (5) A maximum of ten of the required 30 credits hours per renewal period may be obtained at trade shows where products are being promoted.~~

(6) All approved education must be open and available to all instructor licensees.

(7) CE courses must be completed prior to applying for renewal of an active instructor license. ~~Failure to meet the CE requirement will automatically result in the license being placed on inactive status.~~

~~(8) To activate an inactive instructor license, licensees shall submit evidence of completion of 15 hours of approved continuing education obtained within the 12-month period prior to activating the license. Licensees shall also be required to complete an additional 30 hours of continuing education before the renewal date set by ARM 24.101.413.~~

~~(9) (8) Schools Licensees shall maintain records of their CE hours credits for their instructors for a minimum of three years. Individual instructors not affiliated with a school shall maintain records of their CE credits for a minimum of three years.~~

(9) Credit will be granted only for the actual hours attended. Attendance will be recorded in half-hour increments.

~~(10) The board shall audit for compliance with CE requirements Continuing education hours will not be granted to an instructor teaching the course.~~

(11) The course provider must supply each licensee with a course completion certificate and course evaluation form and must verify attendance of each licensee.

(12) No licensee shall repeat a course for credit in any three-year period.

(13) Course approval will be for the current calendar year. All courses will expire December 31 of each year.

(14) Course approval may be revoked for cause.

(15) An instructor may receive credit for attending board-sponsored events.

(16) A licensee may place their instructor license on inactive status by submitting a written request that the license be placed inactive.

(17) An inactive licensee has the sole responsibility to keep the board informed of any change of the licensee's mailing address during the period of time the instructor license remains on inactive status.

(18) In order to avoid lapse, expiration, or termination of the instructor license, an inactive licensee must renew the inactive license each renewal period.

(19) An inactive licensee does not need to report continuing education until converting the license to active status.

(20) To convert an inactive instructor license to active status, licensees shall submit evidence of completion of 15 hours of approved continuing education obtained within the 12-month period prior to converting the license.

AUTH: 37-1-131, ~~37-1-141~~, 37-1-319, 37-31-203, MCA

IMP 37-1-141, 37-1-306, MCA

REASON: The board determined it is reasonable and necessary to amend this rule following a recent continuing education (CE) rule review. It was noted during the review that the board and board staff had been using unwritten policies created over several years to process CE approvals. The board is proposing several amendments to this rule to clearly and adequately set forth the current CE requirements and processes, address confusion among licensees and providers, and alleviate questions to staff regarding CE approval.

The board is amending (2) to no longer require the certification of distance education courses because it is not economically feasible for CE providers to pay to become certified just so 70 licensees may utilize them. The board approves all CE, including online education, and will review the distance education courses taken.

The board is amending (7) because neither the board nor department has the authority to change a licensee's status to inactive. The board is amending (8) to reflect that licensed instructors must maintain their own CE records. The board concluded that it is not the school's responsibility to maintain CE records because CE is a requirement for the instructors' continued licensure.

The board is adding (16) through (20) to clearly set forth the CE requirements for inactive status licensees and for conversion back to active status. Although these are the current standards and processes in place, they were not previously set forth in rule. Authority cites are being amended to provide the complete sources of the board's rulemaking authority.

24.121.2301 UNPROFESSIONAL CONDUCT (1) through (1)(o) remain the same.

(p) performing services or using machines and devices outside of the licensee's area of training, expertise, competence, or scope of practice or licensure unless such services are not licensed or inspected by the state of Montana;

(q) through (u) remain the same.

(v) aiding or abetting unlicensed practice by intentionally or unintentionally encouraging, assisting, or failing to prevent the commission of unlicensed practice;
or

(w) failing to provide verification of completed continuing education when requested by the board; or

(x) failing to comply with all completion and reporting requirements for continuing education as established by the board.

(2) remains the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-31-203, MCA

IMP: 37-1-136, 37-1-137, 37-1-141, 37-31-301, 37-31-331, MCA

REASON: It is reasonable and necessary to amend (1)(p) to specify that the board considers licensee use of machines and devices that are outside the licensee's training or scope of practice to be unprofessional conduct. This amendment is consistent with proposed amendments to ARM 24.121.301 and 24.121.1509 elsewhere in this notice.

The board is adding (1)(x) to this rule to specify that the board considers noncompliance with the CE requirements of ARM 24.121.2101 to be unprofessional conduct which could subject the licensee to disciplinary action.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdcos@mt.gov, and must be received no later than 5:00 p.m., May 18, 2010.

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

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or

standard mail is preferred. Such written request may be sent or delivered to the Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to dlibsdcos@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

8. Anjeanette Lindle, attorney, has been designated to preside over and conduct this hearing.

BOARD OF BARBERS AND
COSMETOLOGISTS
WENDELL PETERSEN, 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 5, 2010

BEFORE THE BOARD OF WATER WELL CONTRACTORS AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

| | | |
|---|---|--------------------------|
| In the matter of the amendment of ARM |) | NOTICE OF PUBLIC HEARING |
| 36.21.410, 36.21.413A, 36.21.634, |) | ON PROPOSED AMENDMENT |
| 36.21.635, 36.21.639, 36.21.640, |) | |
| 36.21.645, 36.21.654, 36.21.655, |) | |
| 36.21.656, 36.21.659, 36.21.660, |) | |
| 36.21.678, 36.21.679, 36.21.702, |) | |
| 36.21.801, 36.21.803, 36.21.809, and |) | |
| 36.21.810 pertaining the Board of Water |) | |
| Well Contractors |) | |

To: All Concerned Persons

1. On May 13, 2010, at 9:00 a.m., the Department of Natural Resources and Conservation will hold a public hearing in the Fred Buck Conference Room (first floor), at the Department of Natural Resources and Conservation, Water Resources Division, 1424 Ninth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the agency no later than 5:00 p.m. on April 30, 2010, to advise the agency of the nature of the accommodation that you need. Please contact Art Robinson, Department of Natural Resources and Conservation, 1424 Ninth Avenue, Helena, MT 59620, telephone (406) 444-6643; fax (406) 444-0533; e-mail arobinson@mt.gov.

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

36.21.410 EXAMINATION

(1) and (2) remain the same.

(3) The examination fees may be found at ARM 36.21.415.

(3) and (4) remain the same but are renumbered (4) and (5).

(5) Oral examinations may be given in the Helena board office with specific board approval on a case-by-case basis.

(6) and (7) remain the same but are renumbered (7) and (8).

(9) Any applicant who is determined by the board to be cheating on an examination or using inappropriate material during an examination will fail and be required to wait at least one year before reapplying for a license.

(10) An applicant shall have one year from the date of board approval to take the examination for which the application was approved. If the examination is not taken within that one-year period, the applicant will be required to submit a new application with written verification, and pay the applicable fees.

(11) An applicant who fails to take an examination within 18 months from the date of the last examination that was failed will be required to submit a new application, provide written verification, and pay the applicable fees.

AUTH: 37-43-202, MCA
IMP: 37-43-305, 37-43-308, MCA

REASONABLE NECESSITY: The amendments to ARM 36.21.410 are reasonably necessary to clarify exam fees and to set a timeline and consequences for cheating on examinations in order to ensure equitable treatment of all applicants.

36.21.413A REQUIRED TRAINING (1) Licensees shall obtain a minimum of four hours of board approved training prior to license renewal each July. ~~This requirement will be effective starting with the renewal year of July 1, 1991.~~

- (2) The training may include, but is not limited to:
 - (a) National Water Well Association;
 - (b) Montana Water Well Drillers Association;
 - (c) board sponsored workshops; or
 - (d) other board approved training, relating to the specific area of licensure.
- (3) remains the same.
- (4) Credit may be requested for training classes that a licensee has completed without prior board approval, provided the licensee can supply:
 - (a) verification of actual attendance;
 - (b) a course outline; and
 - (c) an explanation as to why prior approval was not obtained. These courses will be approved on a case-by-case basis.
- (5) and (6) remain the same.

AUTH: 37-43-202, MCA
IMP: 37-43-202(6) and (7), MCA

REASONABLE NECESSITY: The amendments to ARM 36.21.413A are reasonably necessary to remove obsolete language and correct minor grammatical errors.

36.21.634 DEFINITIONS For purposes of this chapter, the following terms shall apply:

- (1) "Abandoned water well":
 - (a) "permanent" means a well whose use has been permanently discontinued; and
 - (b) "temporary" means a well from which a drilling rig has been removed from the well site prior to completing or altering the well.
- (2) remains the same.
- (3) "Annular space" or {"annulus"} means the space between a drill hole and a casing pipe, or between two well casings.
- (4) through (8) remain the same.
- (9) "Casing":

(a) "inner" means the inner tubing, pipe, or conduit installed inside the well casing or lower well drill hole, ~~and~~ which is used to protect against caving formations or to seal out polluted or mineralized water zones; and

(b) "outer" means an impervious durable pipe placed in a well to:

(i) prevent the walls from caving; ~~to~~ ;

(ii) seal off surface drainage or undesirable water, gas, or other fluids to prevent their entering the well; ~~and~~ ~~to~~

(iii) prevent the waste of groundwater ~~water~~.

(10) remains the same.

(11) "Clay" means a fine-grained, inorganic material having plastic properties and with a predominant grain size of less than 0.005 mm ~~or~~ (0.0002 inches).

(12) "Community water system" means any public water supply system which serves at least ten service connections used by year-round residents or regularly serves at least ~~25~~ 15 year-round residents.

(13) "Concrete" means a mixture of not more than two parts sand and one part cement, and not more than six gallons of clear water per 94-pound bag of ~~p~~Portland cement. Up to five percent, by weight, of bentonite clay may be used to improve flow and reduce shrinkage.

(14) remains the same.

(15) "Consolidated formation" means any geologic formation in which the earth materials have become firm and coherent through natural rock forming processes. ~~It includes,~~ including, but is not limited to, basalt, granite, sandstone, shale, conglomerate, and limestone.

(16) "Construction of water wells" means all acts necessary to obtain ground ~~ground~~ groundwater by wells, including:

(a) the contracting for, and excavation of the well; ;

(b) installation of casing, sealing material, and screens; ; and

(c) developing and testing, whether in the installation of a new well or the alteration of an existing well. The term does not include the installation of permanent pumps and pumping equipment.

(17) and (18) remain the same.

(19) "Disinfection" means the introduction of chlorine, or other disinfecting agents using a method approved by the board, in a sufficient concentration and followed by an adequate exposure contact time so as to inactivate coliform or other indicator organisms.

(20) remains the same.

(21) "Gravel pack":

(a) "artificial gravel pack" means placement of gravel in the annular space around the well casing or screen. A gravel pack is frequently used to:

(i) prevent the movement of finer material into the well casing; ;

(ii) ~~to~~ increase the ability of the well to yield water; and

(iii) ~~to~~ lend lateral support to screens in unstable formations; and

(b) "natural gravel pack" means a gravel pack which leaves the coarser, naturally occurring gravels around the screen. The finer sands are removed from the formation by development.

(22) remains the same.

(23) "Montana Bureau of Mines and Geology (MBMG)" means the Montana Bureau of Mines and Geology located in Butte, Montana.

(234) "~~Multi-family~~ Multiple-user water supply system" means a nonpublic water supply system designed to provide water for human consumption. In estimating the population served, the reviewing authority shall multiply the number of living units based on the most recent census data. to serve The supply system shall provide water for:

(a) ~~2 3~~ through ~~9 14~~ living units; or

(b) 3 through 14 commercial units. The total people served shall not exceed

24.

(24) through (27) remain the same but are renumbered (25) through (28).

(289) "Public water supply system" means a system for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that has at least 15 service connections or that regularly serves at least 25 persons daily for any period of at least 60 days or more in a calendar year.

(29) remains the same but is renumbered (30).

(301) "Pumps" and "pumping equipment" means any equipment or materials utilized or intended for use, including seals and tanks, together with fittings and controls, in withdrawing or obtaining ~~ground water~~ groundwater for any use.

(342) "Sand" means a detrital material having a prevalent grain size ranging from 2 millimeters to 0.06 millimeters ~~or (0.08 inches to 0.002 inches).~~

(32) remains the same but is renumbered (33).

(334) "Sealing material" means neat cement, bentonite water slurry or grout, or bentonite chips or pellets. Bentonite water slurry shall be mixed according to the manufacturer's instructions as a sealing material, and shall ~~in no case~~ contain no less than 1.5 pounds of bentonite per gallon of ~~freshwater~~ water. The mixed slurry shall weigh ~~not~~ no less than nine pounds per gallon.

(a) and (b) remain the same.

(c) Any slurry or cement shall be pumped from the bottom up. Chip or pellet placement may be gravity fed at a controlled rate that equals or is slower than the manufacturer's recommendation, and in such a manner that will prevent bridging.

(345) "Silt" means an unconsolidated clastic sediment composed predominantly of particles between 0.06 and 0.005 mm ~~or (0.002 inches to 0.0002 inches)~~ in diameter.

(356) "Static water level" means the vertical distance from the surface of the ground to the water level in a well when no water is being taken from the aquifer, either by pumping or by free flow.

(37) "Transient noncommunity water system" means a public water supply system that is not a community water system and that does not regularly serve at least 25 of the same persons for at least six months per year.

(3638) "Unconsolidated formation" means naturally occurring, noncemented materials including, but not limited to, clay, sand, silt, and gravel.

(37) remains the same but is renumbered (39).

(3840) "Well drilling machine" means any power-driven machine used in the construction or alteration of water wells, including, but not limited to, percussion, jetting, rotary, boring, digging, or augering machines.

~~(3941) "Well log report" means DNRC Form No. 603 (see ARM 36.12.102). The water well driller/contractor shall record the well information on the wells constructed and file the report as required by ARM 36.21.639 and 85-2-516 and 85-2-527, MCA. to be completed and filed by a water well driller/contractor to record well information on wells constructed.~~

AUTH: 37-43-202(3), MCA
IMP: 37-43-202(3), MCA

36.21.635 PUBLIC, COMMUNITY, NONCOMMUNITY PUBLIC, AND MULTI-FAMILY MULTIPLE-USER WATER SUPPLY WELLS (1) All wells for public, community, noncommunity public, and multi-family multiple-user water supply system use are governed by those construction standards set forth in the Department of Environmental Quality rules (ARM Title 17, chapters 30, 36, and 38). Copies of the those rules may be obtained by contacting DEQ that department.
(2) The minimum construction standards set by the Board of Water Well Contractors in this subchapter (~~Title 36, chapter 21, sub-chapter 6~~) shall apply to all wells in Montana. However, for the above-stated wells, the department of environmental quality DEQ may adopt more specific or stringent standards.

AUTH: 37-43-202(3), MCA
IMP: 37-43-202(3), MCA

REASONABLE NECESSITY: The amendments to ARM 36.21.634 and 36.21.635 are reasonably necessary for clarification and to conform with existing DEQ rules and other drilling rules and construction standards in order to avoid potential conflicts between rule sets. The amendments also correct minor grammatical errors.

36.21.639 WELL LOG REPORTS (1) ~~A licensed~~ Licensed Montana water well contractors/drillers shall prepare a well log report form for each well drilled. The contractors/drillers shall ~~supply a copy of the file each~~ file each well log report (Form No. 603) with the Ground Water Information Center (GWIC) of the MBMG within 60 days of completing the well. The contractors/drillers shall also provide copies of each well log, within 60 days of completing the well, to:
(a) ~~to the water well owner;~~ and
(b) other such agencies as required by sections 85-2-516 and 85-2-517, MCA, , and maintain a copy as a record in his files.
(2) The contractors/drillers must maintain copies of each well log report in their own files.

AUTH: 37-43-202(3), MCA
IMP: 37-43-202(3), MCA

REASONABLE NECESSITY: The amendments to ARM 36.21.639 are reasonably necessary to set time tables for filing well logs and to identify the entity that well logs must be filed with. The amendments also correct minor grammatical errors.

36.21.640 WELL CASING (1) All casing installed, other than plastic casing as set forth in ARM 36.21.641 and 36.21.645, shall be of steel, in new or like new condition, being free of pits, breaks, or contamination, and shall meet minimum American Society of Testing materials (ASTM) A-120 A53 specifications for line pipe, for the following sizes:

Table 1 - Minimum specifications for steel well casing.

| Nominal Size (inches) | Outside Diameter (inches) | Wall Thickness (inches) | Weight Per Foot (pounds) |
|-----------------------|---------------------------|-------------------------|--------------------------|
| 2 | 2.375 | 0.154 | 3.56 |
| 2 | 2.875 | 0.203 | 5.79 |
| 3 | 3.500 | 0.216 | 7.58 |
| 3 | 4.000 | 0.226 | 9.11 |
| 4 | 4.500 | 0.237 | 10.79 |
| 5 | 5.563 | 0.244 | 13.70 |
| 6 | 6.625 | 0.250 | 17.02 |
| 8 | 8.625 | 0.250 | 22.36 |
| 10 | 10.750 | 0.250 | 28.04 |
| 12 | 12.750 | 0.312 | 41.45 |
| 14 | 14.000 | 0.312 | 45.68 |
| 16 | 16.000 | 0.312 | 52.27 |
| 18 | 18.000 | 0.375 | 70.59 |
| 20 | 20.000 | 0.375 | 78.60 |

(2) All casing having a diameter larger than 20 inches shall have a wall thickness of at least 0.375 inch.

(3) Well casing installed in a well greater than a nominal diameter of ten inches, may have a wall thickness of 0.250 inch as long as it otherwise meets ASTM A-120 A53 specifications and does not exceed the following depth limitations:

Table 2 – Diameter and depth limitations.

| Diameter | Maximum Depth |
|--------------|---------------|
| 12 inches | 250 feet |
| 14-16 inches | 150 feet |
| 18-20 inches | 100 feet |

(4) remains the same.

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

REASONABLE NECESSITY: The amendments to ARM 36.21.640 are reasonably necessary because the A-120 specification from the American Society of Testing Materials is obsolete. ASTM A53 is the most commonly used casing in the state and meets or exceeds current specifications for wall thickness.

36.21.645 PLASTIC CASING (1) All plastic casing shall be installed only in an oversized drill hole without driving. Wells cased with plastic shall have steel casing extending a minimum of ~~48~~ 25 feet below the surface and 18 inches above the ground surface. Plastic casing to be used must be specifically designed for water well construction and bears NSF approval. Methods of installation shall be:

(a) ~~by installing a larger size steel casing on the outside of the plastic casing with a minimum of 4~~ four feet of overlap (see Figure 6A at the end of this subchapter); or

(b) ~~by attaching directly to the plastic casing a threaded plastic to steel coupling (Figure 6B) .~~

(2) Thermoplastic well casing shall conform with ~~American Society for Testing and Materials~~ ASTM Specification F480-81, or its latest revision, as follows:

(a) and (b) remain the same.

(c) minimum pipe stiffness shall be 224 foot-pounds/in² [kiloneutron (meter meter)] when tested according to section 5.4.1 of ~~American Society for Testing and Materials~~ ASTM Specification F480;

(d) all casing ~~5~~ five inches [~~(12.7 centimeters)]~~ and larger shall be tested for impact resistance and shall meet or exceed IC-1 impact classification according to section 6.5 and table 6 of ~~American Society for Testing and Materials~~ ASTM Specification F480; and

(e) through (5) remain the same.

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.654 SEALING OF CASING – GENERAL (1) In constructing, developing, redeveloping, or conditioning a well, care shall be taken to preserve the natural barriers to ground-water movement between aquifers and to seal aquifers or strata penetrated during drilling operations which might impair water quality or result in cascading water.

(a) All sealing shall be permanent and prevent possible downward movement of surface waters in the annular space around the well casing.

(b) Sealing shall be accomplished to prevent the upward movement of artesian waters within the annular space around the well casing that could result in the waste of groundwater ~~water~~.

(c) The sealing shall restrict the movement of groundwater ~~water~~ either upward or downward from zones that have been cased out of the well because of poor quality.

(d) When cement grout is used in sealing, it shall be set in place 72 hours before additional drilling takes place, unless special additives are mixed with the sealing material that will cause it to adequately set in a shorter period of time.

(e) All sealing shall be performed by adding the mixture from the bottom of the space to be sealed toward the surface in one continuous operation. The minimum sealing material thickness shall be ~~3~~ three inches. A minimum thickness of 1.5 inches of sealing material shall be applied around the outside of the casing.

~~(a) Three inches of sealing material shall mean 1 1/2 inches of sealing material around the outside of the casing on all sides.~~

(2) remains the same.

(3) All new wells shall be sealed to a minimum depth of ~~48~~ 25 feet with appropriate sealing material with the exception of those wells addressed in (4) of this rule.

(4) and (5) remain the same.

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.655 CONSOLIDATED FORMATIONS (1) The following special sealing methods may be required in situations where different techniques are necessary to protect aquifers.

(a) ~~(2)~~ In drilled wells that penetrate an aquifer either within a consolidated or confining formation, sealing of the casing shall conform with one of the following procedures:

(i) ~~(a)~~ An upper drill hole, at least ~~3~~ three inches greater in diameter than the nominal size of the permanent well casing, shall extend from land surface to at least ~~3~~ three feet into sound, consolidated formation, ~~but in . In no instance shall said upper drill hole extend less than 48~~ 25 feet below land surface; and

(ii) Unperforated permanent casing shall be installed to extend to this same depth, and the lower part of the casing shall be sealed into the rock formation with cement grout. The remainder of the annular space to land surface shall be filled with an appropriate sealing material (see Figure 2A at the end of this subchapter).

(3) remains the same but is renumbered (2).

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.656 UNCONSOLIDATED FORMATIONS WITHOUT SIGNIFICANT CLAY BEDS (1) The following special sealing methods may be required in situations where different techniques are necessary to protect aquifers.

(a) ~~(2)~~ In drilled wells that penetrate an aquifer overlain by unconsolidated formations such as sand and gravel without significant clay beds, an unperforated well casing shall extend to at least ~~4~~ one foot below the known seasonal low water table. An upper drill hole having a diameter at least ~~3~~ three inches greater than the

nominal size of the permanent casing shall extend to at least ~~48~~ 25 feet below land surface.

(3) through (6) remain the same but are renumbered (b) through (e).

(7) remains the same but is renumbered (2).

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.659 SEALING OF ARTIFICIAL GRAVEL PACKED WELLS, PERMANENT SURFACE CASING NOT INSTALLED (1) The following special sealing methods may be required in situations where different techniques are necessary to protect aquifers.

(a) ~~(2)~~ An upper drill hole having a diameter of at least ~~3~~ three inches greater than the outside diameter of the production casing shall be drilled to extend from land surface into a clay or other formation of low permeability overlying the water-bearing zone.

(b) The annular space to this depth shall be filled with sealing material. If the clay or other impermeable formation is at or near land surface, the upper drill hole and unperforated production casing shall extend to a minimum depth of ~~48~~ 25 feet below land surface, provided that the casing does not pass through the impermeable zone.

(c) A suitable bridge shall be installed in the annular space between the gravel pack and the sealing material. A gravel fill pipe may be installed for injecting gravel prior to sealing the top of the gravel pack (see ARM 36.21.656~~(5)~~) for definition of a suitable bridge).

(d) Special care shall be taken to ensure that the seal is watertight around the injection pipe. The injection pipe shall be capped with a watertight seal or plug (see Figure 4A at the end of this subchapter).

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.660 SEALING OF ARTIFICIAL GRAVEL PACKED WELLS, PERMANENT SURFACE CASING INSTALLED (1) The following special sealing methods may be required in situations where different techniques are necessary to protect aquifers.

(a) ~~(2)~~ When permanent surface casing is installed, the well bore shall have a diameter of at least ~~3~~ three inches greater than the surface casing for the introduction of sealing materials.

(b) A watertight seal shall be installed at the top of the gravel pack between the permanent surface and production casing.

(c) Sealing procedures and installation of gravel fill pipes are substantially the same as in ARM 36.21.659 ~~above~~.

(d) If a temporary casing is used to maintain the oversized drill hole, the annular space to be sealed under conditions of ARM 36.21.659 and 36.21.660 shall be kept full with cement grout or bentonite clay grout as the temporary casing is withdrawn (see Figure 4B at the end of this subchapter).

(2) ~~(3)~~ If a clay layer or other formation of low permeability is not encountered before reaching the top of the water-bearing zone, the upper drill hole and unperforated production casing shall extend to a minimum depth of 48 25 feet below land surface. Sealing procedures, installation of gravel fill pipes, and temporary casing are substantially the same as in ARM 36.21.659 and 36.21.660.

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

36.21.678 WATER WELL LOG REPORT (1) A water well log report, Form No. 603, fully describing all abandonment procedures, shall be submitted to the ~~department of natural resources and conservation~~ Ground Water Information Center (GWIC) of the MBMG within 60 days of abandoning the well.

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

REASONABLE NECESSITY: The amendments to ARM 36.21.645, 36.21.654 through 36.21.656, 36.21.659 and 36.21.660, and 36.21.678 are reasonably necessary for clarification and to conform with existing DEQ rules and other drilling rules and construction standards in order to avoid potential conflicts between rule sets. The amendments also correct minor grammatical errors.

36.21.679 DRY OR INADEQUATE WELL HOLES (1) Water wells which have been constructed and do not provide an adequate supply of water for the use for which they were drilled (dry hole) are not to be considered completed until the well driller either:

(a) removes the casing and fills the hole with cement grout, concrete, or bentonite clay grout; or

(b) constructs the well in accordance with minimum well construction standards and welds a 0.25 ~~1/4~~-inch thick steel plate fully covering the top of the casing providing a watertight seal.

(2) A water well log report must be completed and filed with each dry hole, as per ARM 36.21.639, after moving the drilling equipment from the drill site.

AUTH: 37-43-202(3), MCA

IMP: 37-43-202(3), MCA

REASONABLE NECESSITY: The amendments to ARM 36.21.679 are reasonably necessary to set time tables for filing well logs and to identify the entity that well logs must be filed with. The amendments also correct minor grammatical errors.

36.21.702 APPLICATION APPROVAL AND EXAMINATION

(1) and (2) remain the same.

(3) The examination fees may be found at ARM 36.21.415.

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

~~(4) Any applicant who has failed the monitoring well constructor examination and wishes to retake the exam will be required to pay the re-examination fee prescribed in ARM 36.21.415.~~

(5) Any applicant determined by the board to be cheating on an examination or using inappropriate material during an examination will fail and be required to wait at least one year before reapplying for license.

(6) An applicant shall have one year from the date of board approval to take the examination for which the application was approved. If the examination is not taken within that one-year period, the applicant will be required to submit a new application with written verification and pay the applicable fees.

(7) An applicant who fails to take an examination within 18 months from the date of the last examination that was failed will be required to submit a new application, provide written verification, and pay the applicable fees.

AUTH: 37-43-202, MCA

IMP: 37-43-303, 37-43-305, MCA

REASONABLE NECESSITY: The amendments to the rule are reasonably necessary to clarify exam fees and to set a timeline and consequences for cheating on examinations in order to ensure equitable treatment of all applicants.

36.21.801 DEFINITIONS The following definitions shall apply for monitoring well construction:

(1) "Abandoned well" means a well whose use has been permanently discontinued.

(2) "Annular space" or "annulus" means the space between two concentric tubes or casings, or between the casing and the borehole wall.

(3) through (5) remain the same.

(6) "Board" means the Montana Board of Water Well Contractors.

(6) and (7) remain the same but are renumbered (7) and (8).

(89) "Casing protective"; means tubing which is installed to counteract caving and isolate the zone being monitored of a drilled hole:

(a) "protective" means a section of pipe or tubing that is placed over the well casing at the surface to provide structural protection to the well and restrict unauthorized entrance into the well- ; and

(9b) "Casing, surface" means a single section of tubing used to stabilize a borehole near the surface during, and following the drilling of the hole.

(10) "Cement" means Portland cement, usually furnished in 94-pound bags.

(11) and (12) remain the same.

(13) "Contamination" means the degradation of natural water quality as a result of ~~man's~~ human activities. There is no indication of specific limits, since the degree of permissible contamination depends upon the intended use(s), ~~or uses,~~ of the water.

(14) through (19) remain the same.

(20) "Hazardous" means a condition where materials or fluids contain sufficient types and amounts of biological, chemical, or physical (including radiological) agents which are likely to cause human illness, disorders, or disability.

These include, but are not limited to, pathogenic viruses, bacteria, parasites, toxic chemicals, and radioactive isotopes.

(21) through (25) remain the same.

(26) "Monitoring well" means a well that is used for monitoring groundwater quality or flow direction, but is not used for withdrawing groundwater for purposes other than water quality sampling or pump testing.

(27) "Monitoring Well Log Report Form" means DNRC Form No. 603, Well Log Report. The monitor well constructor shall record the well information on the wells constructed and file the report as required by ARM 36.21.639 and 85-2-516 and 85-2-527, MCA. ~~the form required by the department of natural resources and conservation to be filed for each monitoring well completed.~~

(28) "Montana Bureau of Mines and Geology (MBMG)" means the Montana Bureau of Mines and Geology located in Butte, Montana.

(28) remains the same but is renumbered (29).

(29) "Nonbiodegradable fluidizing admixtures" means grout additives that provide temporary reduction of gel strength by dispersing the clay particles. Nonbiodegradable limits the use to only those additives not subject to biological decomposition. Natural polymers are biodegradable and may not be used. Totally synthetic polymers must be used with care, and only after determining that they are chemically acceptable can they be introduced into freshwater systems.

(30) through (35) remain the same but are renumbered (31) through (36).

(36) "Recovery well" means a well installed to recover contaminants that have been introduced into the groundwater table, but is not used for monitoring groundwater quality or flow direction.

(37) "Saline seep" means an artificially created groundwater system of poor quality, created by a change in the land use, which generally occurs in materials of very low transmissivity.

(a) remains the same.

(38) remains the same but is renumbered (39).

(39) "Sealing material" means an impervious or low permeable inorganic material used for the purpose of preventing interaquifer contamination and/or surface water infiltration. Types of sealing material include ~~The term includes:~~

(a) Asphaltic concrete, which is means a mixture of dense graded sand or sand and gravel and asphalt cement with less than 8% eight percent air voids; ;

(b) Bentonite clay grout, which is means a mixture of at least 1.5 pounds of bentonite clay per gallon of potable water; ;

(c) Bentonite pellets and chips, which are means particles of bentonite passing a 3/4 0.75-inch sieve and retained on a #4 sieve; ;

(d) Compacted clay cuttings, which are means uncontaminated cuttings, a sample of which can be rolled into a thread of 1/8 0.125 inch in diameter or smaller, and compacted to a density of at least equal to the formation from which they were cut. Bentonite powder passing a #200 sieve may be mixed with the cuttings. When attempting to roll the thread, particles of sand and gravel larger than a #40 sieve may be removed.

(e) Cuttings slurry grout, which is means a mixture of uncontaminated water and a minimum of 15% percent solids by weight consisting of uncontaminated clay

or shale cuttings, and a minimum of ~~40%~~ ten percent bentonite by weight. The mixture shall have a unit weight of at least 9.00 pounds per gallon. ;

(f) ~~G~~granular bentonite, which is means a bentonite sand size particles, most of which passes a #4 sieve, and most of which are retained on a #200 sieve. ;

(g) ~~N~~eat cement grout, which is means a mixture of not more than six gallons of potable water per 94-pound sack of Portland cement. Up to five pounds of bentonite clay per sack of cement may be added. When bentonite is added, the quantity of water may be increased 0.1 gallon for each pound of bentonite per sack of cement. Commercial fly ash may be substituted on a weight basis for up to half of the Portland cement. ; and

(h) Portland cement concrete, which is means a mixture of sand, Portland cement, potable water, and 4 four to ~~8%~~ eight percent air. ~~The mixture may~~ May contain gravel. ~~Fly~~ , and fly ash may be substituted for up to 25% percent of the Portland cement. ~~It shall~~ Shall contain at least six sacks of cement per cubic yard and have a 28-day compressive strength of at least 4,000 psi.

(40) through (49) remain the same but are renumbered (41) through (50).

AUTH: 37-43-202, MCA

IMP: 37-43-202, MCA

REASONABLE NECESSITY: The amendments to ARM 36.21.801 are reasonably necessary to define "board" within the subchapter, to set a timeline for filing well log reports, and to identify the Bureau of Mines and Geology. The amendments also correct minor grammatical errors.

36.21.803 MONITORING WELL CONVERSION (1) A well used for monitoring purposes may not be converted to a water supply well, unless it:

(a) meets minimum water well construction standards (~~ARM Title 36, chapter 21, sub chapter 5~~), ;

(b) has board approval; and

(c) complies with the Department of Natural Resources and Conservation's water rights statutes. (Title 85, chapter 2, MCA).

AUTH: 37-43-202, MCA

IMP: 37-43-202, MCA

REASONABLE NECESSITY: The amendments to the rule are reasonably necessary to removed the reference to subchapter 5, which was repealed in 1997. The amendments also correct minor grammatical errors.

36.21.809 MONITORING WELL REPORTS (1) A licensed monitoring well constructor shall prepare a monitoring well report form for each monitoring well drilled. The monitoring well constructor shall ~~supply copies of the report to the monitoring well owner and the department of natural resources and conservation within 60 days of completing the well. The monitoring well constructor shall retain a copy as a record in his files.~~ file each well log report (Form No. 603) within 60 days of completion of the well with the Ground Water Information Center (GWIC) of the

MBMG. The contractors/drillers shall also provide copies of each well log, within 60 days of completion of the well, to:

(a) the water well owner; and

(b) other such agencies as required by 85-2-516 and 85-2-517, MCA.

(2) The monitoring well constructors must maintain copies of each well log report in their own files.

AUTH: 37-43-202, MCA

IMP: 37-43-202, MCA

REASONABLE NECESSITY: The amendments to ARM 36.21.809 are reasonably necessary to set time tables for filing well logs to identify the entity that well logs must be filed with. The amendments also correct minor grammatical errors.

36.21.810 ABANDONMENT

(1) remains the same.

(2) Monitoring wells, that have outlived their useful purpose shall be abandoned by one of the following methods:

(a) ~~If~~ if the casing and screen are left in place, the casing and screen shall be sealed from the bottom up by the following methods:

(i) using a pump and hose or tremie pipe to conduct the sealing material to the bottom of the well; or

(ii) by filling the casing and screen with bentonite pellets or chips placed in a manner that will prevent bridging. Metal casings shall be cut off ~~3~~ three feet below the ground surface and the last ~~3~~ three feet backfilled with naturally occurring soils;

~~(i) It is recommended that in all cases where possible the casing be pulled.~~

(b) the department recommends that the casing be removed in all possible instances. If the casing and/or screen are removed, the hole shall be filled with sealing material, concrete, or bentonite pellets or chips from the bottom up, as the casing and/or screen is removed. From ~~6~~ six to ~~3~~ three feet from the surface, bentonite shall be added to the well. The last ~~3~~ three feet shall be filled with naturally occurring soils;

(c) ~~The~~ the sealing material shall be bentonite pellets or chips, bentonite clay grout, neat cement grout, or concrete. ~~They~~ The material may contain nonbiodegradable fluidizing admixtures, provided they will not contaminate the ~~ground~~ groundwater. Sealing materials which settle shall be topped to provide a continuous column of grout to within ~~3~~ three feet of the surface; or

(d) ~~O~~ Other methods for abandonment with prior board approval.

(3) and (4) remain the same.

(5) A water well log report, fully describing all abandonment procedures, shall be submitted to the Ground Water Information Center (GWIC) of the MBMG within 60 days of abandoning the well.

AUTH: 37-43-202, MCA

IMP: 37-43-202, MCA

REASONABLE NECESSITY: The amendments to ARM 36.21.810 are reasonably necessary for clarification and to conform with existing DEQ rules and other drilling rules and construction standards in order to avoid potential conflicts between rule sets. The amendments also correct minor grammatical errors.

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 in writing to Art Robinson, Department of Natural Resources and Conservation, 1424 Ninth Avenue, Helena, MT 59620; fax (406) 444-6643; or e-mail arobinson@mt.gov, and must be postmarked no later than May 13, 2010.

5. Art Robinson, Department of Natural Resources and Conservation, has been designated to preside over and conduct the hearing.

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

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 that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

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

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

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

/s/ Fred Robinson
FRED ROBINSON
Rule Reviewer

Certified to the Secretary of State April 5, 2010.

7-4/15/10

MAR Notice No. 36-22-137

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

In the matter of the amendment of ARM)
36.25.205 regarding procedures for the)
issuance of state oil and gas leases.)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

To: All Concerned Persons

1. On May 12, 2010 at 1:00 p.m., the Department of Natural Resources and Conservation will hold a public hearing in the Director's Conference Room (third floor) at the Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the agency no later than 5:00 p.m. on April 30, 2010, to advise the department of the nature of the accommodation that you need. Please contact Tommy Butler, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT; telephone (406) 444-3776; fax (406) 444-2684; e-mail tbutler@mt.gov.

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

36.25.205 PROCEDURES FOR ISSUE OF LEASE (1) A sale of oil and gas leases on state lands normally will be held once each quarter, on the first or second Tuesday of March, June, and December, and on a day in September that will not conflict with the Labor Day holiday. It will be in the department's discretion to waive a sale on any of these dates if insufficient applications have been received or to postpone if circumstances warrant. In such event a notice of "no sale" will be published in ~~the Montana oil journal or in~~ a publication of general circulation in Montana ~~as provided for in (2).~~

(2) Sale of each lease will be by competitive, oral bidding, ~~and sale~~

(a) Sale will be made and a lease executed to the qualified bidder who makes the highest bid.

(b) In the absence of any bid at such sale, on a particular tract, a lease will be issued to the person who first made application therefore in accordance with these rules.

(c) The department reserves the right to reject any and all bids on any tract offered for lease.

~~(2)~~ (3) Any person who wishes to nominate ~~desires that~~ any tract of state lands ~~be offered for an~~ oil and gas leasing at lease sale as above described shall make application for oil and gas leasing on the form currently in use by the department ~~prescribed by the department and then in current use~~. Blank forms for such applications may be secured from the department at no cost. ~~Such application~~

shall be, in form, an application for the issuance of an oil and gas lease to the applicant, shall contain, among other things, an adequate and sufficient description of the land sought to be leased, and shall be deemed and considered for all purposes an offer to lease the lands described therein and a bid therefor in the amount of the minimum required first year's rental.

~~(a) There A \$15.00 application fee shall be submitted with the application, payment of a \$10.00 application fee, and this and is shall be the only payment required to be submitted with the application. ; however each application shall constitute an undertaking to pay, within 10 days after the lease sale, the required first year's rental for the lease if at the lease sale the first applicant is the successful bidder therefor.~~

~~(b) Each application shall be an offer and constitute an undertaking to pay the required first year's rental for the lease within ten days following the lease sale if the applicant is the successful bidder, or if no one bids at the lease sale. The application shall contain an adequate and sufficient description of the land sought to be leased.~~

~~(i) If at the lease sale the successful bidder at the lease sale is a person other than the first applicant, the that person shall submit within 10 days after the sale the required first year's rental within ten days following the sale.~~

~~(c) In order to permit the necessary time for notice of sale as herein provided, applications should be filed with the department at least 40 The department shall accept applications until 77 days prior to the date fixed for sale, as provided for in 77-3-411(2) whenever possible.~~

~~(d) Any application made may be withdrawn by the applicant if request for such withdrawal is received by the department prior to the withdrawal date indicated in the letter that is sent to the applicant by the department. However, the time when the second notice of the sale, as hereafter provided, is sent to the publisher, but the ten dollar \$15.00 application fee will not be refunded.~~

~~(e) Where If more than one application is filed on any one tract, the department shall notify each person submitting an application subsequent to receipt of the first qualified application, that there is a prior application for that tract. The department will return the application fee(s) to those subsequent applicants, and shall return the application fee.~~

~~(f) Where If the first applicant for a tract withdraws his the application as provided above in (d), and subsequent applications for that tract have been received, the tract shall be offered for lease regardless of the withdrawal. In such cases, the opening bid must not be less than the minimum rental required by ARM 36.25.208. If no bids are made, the tract will not be leased.~~

~~(3) Notice of each sale shall be given by publications in the Montana oil journal, published in Billings, Montana, or in a publication of general circulation in Montana. There shall be at least 2 publications of notice, the first of which shall be within 15 days after the previous oil and gas lease sale, and need contain only the date and place of sale, as its purpose is to allow applicants to submit their applications prior to the 40 day deadline provided above. Other publications, the first of which shall be not more than 40 days prior to the date of the oil and gas lease sale, shall state the exact time and place of the forthcoming sale, shall state that all~~

~~sales will be by competitive oral bidding, and shall describe each tract separately that will be offered for lease.~~

(4) The department will comply with 77-3-411(3), (4), and (5), MCA, to provide notification of the oil and gas lease sale.

~~(4) (5) The department will maintain an interested parties mailing list of prospective oil and gas lessees who request, in writing, that their names be placed on the list. At least 2 two weeks before each sale, the department will send mail to each addressee a copy of the sale notice of sale to each interested party.~~

(6) The department shall provide notify the surface owners as provided for in 77-3-411(6) and (7), MCA.

AUTH: 77-1-302, 77-3-402, 77-3-411, MCA

IMP: 77-1-302, 77-3-411, MCA

REASONABLE NECESSITY: These amendments are reasonably necessary to correct the application filing fee listed in ARM 36.25.205 to reflect the amount listed in ARM 36.2.1003, which became effective January 15, 1988. The amendments also implement the oil and gas lease sale notification requirements of SB 475 (codified in 77-3-411, MCA) from the 2009 legislative session and update outdated department procedures and language.

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 Tommy Butler, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT; telephone (406) 444-3843; fax (406) 444-2684; or e-mailed to tbutler@mt.gov, and must be received no later than 5:00 p.m. on May 13, 2010.

5. Tommy Butler, Department of Natural Resources, has been designated to preside over and conduct the public hearing.

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

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 that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to

the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was contacted by e-mail on February 26, 2010.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

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

/s/ Tommy Butler
TOMMY BUTLER
Rule Reviewer

Certified to the Secretary of State on April 5, 2010.

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 37.87.1202 and 37.87.1206) PROPOSED AMENDMENT
pertaining to Medicaid reimbursement)
for psychiatric residential treatment)
facility (PRTF) services)

TO: All Concerned Persons

1. On May 6, 2010, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on April 27, 2010, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, 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:

37.87.1202 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, DEFINITIONS As used in this subchapter, the following definitions apply:

(1) through (5) remain the same.

(6) "Psychiatric residential treatment facility (PRTF)" means a facility other than a hospital that provides psychiatric services only to individuals under age 21. The PRTF must be ~~licensed~~ certified for Medicaid participation by:

(a) the department as a PRTF; or

(b) the appropriate agency ~~as a PRTF or the equivalent~~ in the state where the facility is located as a PRTF.

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

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

37.87.1206 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, PARTICIPATION REQUIREMENTS (1) remains the same.

(2) PRTF providers, as a condition of participation in the Montana Medicaid program, must comply with the following requirements:

(a) maintain a current license as a PRTF residential treatment facility under the rules of the department's Quality Assurance Division to provide PRTF services, or, if the provider's facility is not located within the state of Montana, maintain a current license in ~~the~~ an equivalent category under the laws of the state in which the facility is located;

(b) ~~maintain a current PRTF certification for Montana Medicaid under the rules of the department's Quality Assurance Division to provide PRTF services or, if the provider's facility is not located within the state of Montana, meet the requirements of (2)(g) and (2)(h) Medicaid participation by the state in which the facility is located as required by the Centers for Medicare and Medicaid;~~

(c) through (j) remain the same.

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

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

4. The Department of Public Health and Human Services (the department) is proposing the amendment of ARM 37.87.1202 and 37.87.1206 pertaining to Medicaid reimbursement for psychiatric residential treatment facility (PRTF) services. These proposed amendments are necessary to make it clear that out-of-state psychiatric residential treatment facilities (PRTFs) must be "certified" by the state survey agency in the state in which the facility is located to participate in the Montana Medicaid program, as required by the Centers for Medicare and Medicaid (CMS), the federal agency that oversees Medicaid.

The department is currently unable to authorize admissions to out-of-state PRTFs that are not currently "certified". This may create some access issues for youth requiring special treatment services not provided by the in-state and out-of-state PRTFs currently enrolled in Montana Medicaid who are certified.

As a result, some youths eligible for Montana Medicaid benefits might not receive needed mental health treatment or treatment might be delayed.

The department does not see an alternative to adding the certification requirement to the PRTF definition and participation requirements in rule. Department representatives confirmed the certification requirement in a recent meeting with CMS officials. Montana Medicaid's federal financial participation (FFP) would be jeopardized if the department did not require out-of-state PRTFs to be certified.

ARM 37.87.1202

The department is proposing an amendment to ARM 37.87.1201(6) "psychiatric residential treatment facility", that would require PRTFs to be certified in the state where the facility is located to participate in the Medicaid program, as required by CMS. The department is proposing to remove the requirement that a PRTF be licensed as this would duplicate the "participation requirement" in ARM 37.87.1206.

ARM 37.87.1206

The department is proposing an amendment to this rule pertaining to PRTF participation requirements, because in-state PRTFs are licensed as "residential treatment facilities", by the department. The department is proposing to add the certification requirement for out-of-state PRTFs so the requirement is the same for both in-state and out-of-state PRTFs.

Persons and entities affected

In state fiscal year 2009, for both in-state and out-of-state PRTFs, 431 youth received Medicaid services for a total expenditure of \$12,975,766. It is anticipated that the in-state PRTFs or other out-of-state enrolled and certified PRTFs will be able to serve youth previously referred to the noncertified PRTFs. The department also anticipates some of the noncertified out-of-state PRTFs to become certified in the near future.

Fiscal effects

At this time, it is unknown what the fiscal impact will be with regard to holding admissions to out-of state noncertified PRTFs enrolled in Montana Medicaid.

5. The department intends to apply these rules retroactively effective February 1, 2010. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Rhonda Lesofski, 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 13, 2010.

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 5, 2010.

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

In the matter of the adoption of New)
Rule I and the amendment of ARM)
37.86.2207, 37.87.733, 37.87.809,)
37.87.903, and 37.87.2233 pertaining)
to Medicaid reimbursement of)
children's mental health services)

NOTICE OF PUBLIC HEARING ON
PROPOSED ADOPTION AND
AMENDMENT

TO: All Concerned Persons

1. On May 6, 2010, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed 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 April 27, 2010, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-9503; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

RULE I 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 Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule dated July 1, 2010. 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.

(2) The department will not reimburse providers for Medicaid services unless the prior authorization and continued authorization requirements in ARM 37.87.903 are met.

(3) The department will not reimburse providers for two services that duplicate one another on the same day. The department adopts and incorporates by reference the Medicaid Mental Health Plan and Mental Health Services Plan for

Youth Services Excluded from Simultaneous Reimbursement (Service Matrix) effective July 1, 2010. A copy of the service matrix may be obtained from the department 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

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

37.86.2207 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT (EPSDT) SERVICES, REIMBURSEMENT (1) and (2) remain the same.

(3) Reimbursement for the therapeutic portion of therapeutic youth group home treatment services is the lesser of:

(a) the amount specified in the department's Medicaid Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule adopted in [RULE I] and a direct care wage add-on, if applicable; ~~The department adopts and incorporates by reference the department's Medicaid Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule dated July 2009. A copy of the 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; or~~

(b) remains the same.

(4) Reimbursement for the therapeutic portion of therapeutic family care treatment services is the lesser of:

(a) the amount specified in the department's Medicaid Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule adopted in ~~(3)~~(a) [RULE I] and a direct care wage add-on if, applicable; or

(b) remains the same.

(5) through (9) remain the same.

(10) The department will not reimburse providers for two services that duplicate one another on the same day according to the Medicaid Mental Health Plan and Mental Health Services Plan for Youth Services Excluded from Simultaneous Reimbursement (Service Matrix) adopted in [RULE I]. ~~The department adopts and incorporates by reference the Medicaid Mental Health Plan and Mental Health Services Plan for Youth Services Excluded from Simultaneous Reimbursement effective January 1, 2009. A copy of the Services Excluded from Simultaneous Reimbursement is posted on the internet at the department's web site at www.dphhs.mt.gov/mentalhealth/children/childrensmentalhealthservicesmatrix.pdf or may be obtained by writing the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~

(11) 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

37.87.733 MENTAL HEALTH CENTER SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (SED), REIMBURSEMENT (1) Medicaid reimbursement for mental health center services shall be the lowest 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 adopted in ~~ARM 37.86.2207~~ [RULE I].

(2) For day treatment services, ~~Medicaid~~ 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) through (2)(a) remain the same.

(b) the amount specified in the department's Medicaid Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule, adopted at ~~ARM 37.86.2207~~ [RULE I]. ~~A copy of the fee schedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~

(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

37.87.903 MEDICAID MENTAL HEALTH SERVICES FOR YOUTH, AUTHORIZATION REQUIREMENTS (1) Mental health services for a Medicaid youth under the Montana Medicaid program will be reimbursed only if the following requirements are met:

- (a) remains the same.
- (b) the department or its designee has determined ~~prior to treatment~~ on a case by case basis, that treatment is medically necessary for early intervention and prevention of a more serious emotional disturbance; ~~and;~~

(i) prior to treatment, (prior authorization); and

(ii) when required, (continued authorization).

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

(3) ~~Prior authorization and when required continued authorization~~ by the department or its designee is required for the following services ~~for a Medicaid recipient who is a youth:~~

- (a) individual or family outpatient therapy services in excess of 24 sessions per state fiscal year, subject to such additional limitations for outpatient therapy services as may be set forth in the Medicaid Mental Health and Mental Health

Services Plan, Individuals Under 18 Years of Age Fee Schedule adopted at ARM ~~37.86.2207~~ [RULE I]. This rule does not apply to a session with a physician or midlevel practitioner for the purpose of medication management;

(b) remains the same.

(c) all outpatient therapy services ~~that are provided concurrently on the same day as with~~ comprehensive school and community treatment (CSCT) described at ARM 37.86.2224, 37.86.2225, 37.106.1955, 37.106.1956, 37.106.1960, 37.106.1961, and 37.106.1965; ~~or~~

(d) ~~as provided for in other rules.~~ therapeutic youth group home services defined ARM 37.86.2207;

(e) therapeutic family care services defined in ARM 37.86.2207;

(f) psychiatric residential treatment facility services defined in ARM 37.87.1202;

(g) psychiatric hospital and partial psychiatric hospital services defined in ARM 37.86.2901 and 37.86.3001; and

(h) as provided for in other rules.

(4) The department may waive a requirement for prior authorization or continued authorization when the provider ~~can~~ submits documentation that:

(a) there was a clinical reason why the request for prior authorization or continued authorization could not be made at the required time, and the provider submitted a subsequent authorization request within ten business days; or

(b) a timely request for prior authorization or continued authorization was not possible because of a failure or malfunction of the department or its designee's equipment that prevented the transmittal of the request at the required time and the provider submitted a subsequent authorization request within ten business days.

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

~~(6) Under no circumstances may a waiver under (4) be granted more than 30 days after the initial date of service.~~

~~(7) (6)~~ Review of authorization requests by the department or its designee will be made with consideration of the department's clinical management guidelines (2008). The department adopts and incorporates by reference the Children's Mental Health Bureau's Provider Manual and Clinical Guidelines for Utilization Management dated July 1, 2010. A copy of the clinical management guidelines (2008) manual can be obtained from the department by a request in writing to the Department of Public Health and Human Services, Health Resources Division Developmental Services Division, Children's Mental Health Bureau, 4400 Broadway 111 N. Sanders, P.O. Box 202954 4210, Helena, MT 59620-2954 59604 or at www.dphhs.mt.gov/mentalhealth/children/index.shtml.

(8) and (9) remain the same but are renumbered (7) and (8).

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 Medicaid Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule, as adopted in ~~ARM 37.86.2207~~ [RULE I].

(4) remains the same.

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

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

5. The Department of Public Health and Human Services (the department) is proposing the adoption of New Rule I and the amendment of ARM 37.86.2207, 37.87.733, 37.87.809, 37.87.903, and 37.87.2233 pertaining to Medicaid reimbursement of children's mental health services. The department is proposing a new rule adopting and incorporating the Medicaid and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule (fee schedule) and the Medicaid Mental Health and Mental Health Services Plan for Youth Services Excluded from Simultaneous Reimbursement (service matrix) from the EPSDT in ARM 37.86.2207 into the children's mental health section.

The department received requests from providers to organize the children's mental health Medicaid and Mental Health Service Plan rules in one section so they would be easier to find. The department agreed and has already moved many of the children's mental health administrative rules to this new section. Moving the fee schedule and service matrix to ARM Title 37, chapter 87, subchapter 9 would put them with the other children's mental health rules.

The department is proposing the following changes to the service matrix so it will be easier to read and understand. The proposed changes are to: (a) specify that moderate level therapeutic family care (Mod TFC) and permanency level therapeutic family care may not be reimbursed on the same day; and (b) specify that no other mental health service on the service matrix will be reimbursed on the same day as psychiatric residential treatment services (PRTF), with the exception of the day of admission and/or discharge.

To inform providers of the proposed changes to the service matrix, the service matrix document (with changes indicated in red) will be posted on the Children's Mental Health Bureau's web site at www.dphhs.mt.gov/mentalhealth/children/index.shtml so providers may review and comment on the proposed changes in the rulemaking process. Interested persons without access to the internet may obtain copies from the department by writing the Children's Mental Health Bureau (CMHB), P.O. Box 4210, Helena, MT 59604-4210.

CMHB is proposing to change the name of and condense and reorganize for clarity, the 2008 Clinical Management Guidelines in ARM 37.87.903. The new name will be the "Children's Mental Health Bureau's Provider Manual and Clinical Guidelines for Utilization Management" with an effective date of July 1, 2010. The 2008 clinical management guidelines were developed by CMHB with our utilization review contractor, First Health, Inc. The manual and its guidelines are used to make

authorization decisions based on clinical criteria to determine whether or not mental health services are medically necessary and reimbursable by the children's mental health Medicaid program. The language incorporating the manual in the administrative rule, would be updated to "adopt and incorporate". This language is consistent with the language in ARM 37.87.901 that "adopts and incorporates" our fee schedule and service matrix.

CMHB is proposing minor changes to a few of the chapters. The proposed changes will be posted on the CMHB's web site at www.dphhs.mt.gov/mentalhealth/children/index.shtml so providers may review and comment on the proposed changes.

A few more requirements will be added to the PRTF chapter of the manual to require more information about the client's discharge. If the discharge plan does not evolve adequately during a youth's stay in the PRTF, continued authorization for reimbursement will be denied. Discharge planning is already a PRTF requirement and one criteria for continued authorization. However, discharge plans are frequently inadequate to step the youth down to a lower level of care on time. If services upon discharge are not adequately arranged, the likelihood of the youth's success in a community setting is greatly diminished.

The PRTF HCBS Waiver chapter of the manual is being updated to reflect waiver amendments regarding the age of youth served and additional counties and services covered.

CMHB is proposing to update the therapeutic living chapter of the manual into two separate chapters: one for therapeutic youth group home services and another chapter for therapeutic family care services. Clarification will be added to the therapeutic family care chapter of the manual to indicate permanency level therapeutic family care services will only be authorized in foster care homes and not authorized in biological or postadoption homes.

The proposed new rule and amendments are described in detail below.

Rule I

The Children's Mental Health Fee Schedule and updated service matrix would be adopted and incorporated in Rule I. The fee schedule and service matrix were previously adopted and incorporated in ARM 37.86.2207. This change is being proposed to move all children's mental health rules to the children's mental health section of ARM Title 87, chapter 87. The department previously moved many of the children's mental health rules to this chapter. The CMHB address and division name are also being updated.

ARM 37.86.2207

The amendments proposed for this rule would repeal the adoption and incorporation of the Medicaid Mental Health Services Plan, Individuals Under 18 Years of Age Fee

Schedule, (fee schedule) in (3)(a) and of the Medicaid Mental Health and Mental Health Services Plan for Youth Services Excluded from Simultaneous Reimbursement (service matrix) in (10) and move them to the children's mental health section to Rule I.

ARM 37.87.733

The department is proposing to move the Children's Mental Health Fee Schedule to Rule I and to update the fee schedule reference in (1)(b) to the new Children's Mental Health Fee Schedule adopted in Rule I.

ARM 37.87.809

The department is proposing to move the Children's Mental Health Fee Schedule to Rule I and to update the fee schedule reference in (2)(b) to the new fee schedule in Rule I. The CMHB address is being deleted because the information would be transferred to Rule I under this proposal.

ARM 37.87.903

The department is proposing more specific language regarding authorization requirements including prior and continued authorizations in this rule. Both prior and continued authorizations are needed before a service is provided to a Medicaid recipient. The purpose of prior and continued authorization is to determine whether the service is medically necessary or continues to be medically necessary. The department's authorization requirements have not changed. The rule is being updated to make it easier to read and understand.

The language in (3)(c) is changed to be consistent with the language in the service matrix. Both this rule and the service matrix do not allow Comprehensive School and Community Treatment and outpatient therapy services to be reimbursed if provided on the same day unless outpatient therapy is priorly authorized.

The department also proposes to add additional services to (3) that require prior and continued authorization for reimbursement: therapeutic youth group home, therapeutic family care, psychiatric residential treatment facility, psychiatric hospital and partial hospital programs. The department's authorization requirements have not changed. The rule is being updated to make it easier to read and understand.

The department is also proposing to amend the language in (4) as to when the department may waive a requirement for prior authorization or continued authorization of a service. If a clinical reason exists preventing the authorization request from being made timely, and a subsequent authorization request is made within ten business days and states the clinical reason the authorization request was made late, the timely authorization request requirement may be waived. The rule language is also being updated to specify that the department may waive an authorization requirement when a continued authority request is submitted late due

to a failure or malfunction of the department's or designee's equipment and not the provider's equipment.

The department's 2008 clinical management guidelines would be updated to the July 1, 2010 version and renamed the "Children's Mental Health Bureau's Provider Manual and Clinical Guidelines for Utilization Management" as part of the department's ongoing effort to make its rules easier to read and understand. The language is also being updated to "adopt and incorporate" this manual to be consistent with the language in Rule I that adopts and incorporates the department's Children's Mental Health Fee Schedule and Service Matrix. The department is proposing to condense and reorganize the manual for clarity. Minor changes will be made to a few of the chapters. The proposed changes will be posted on the CMHB's web site at www.dphhs.mt.gov/mentalhealth.children/index.shtml.

Minimal requirements will be added to the PRTF chapter of the manual to require more information about the client's discharge plan. If the discharge plan does not evolve adequately during a youth's stay in the PRTF, continued authorization for reimbursement will be denied. Discharge planning is already a PRTF requirement and one criteria for continued authorization; however, discharge plans are frequently inadequate to step the youth down to a lower level of care. If services upon discharge are not adequately arranged, the likelihood of the youth's success in a community setting is greatly diminished.

The PRTF HCBS Waiver chapter is being updated to reflect waiver amendments regarding age of youth served and additional counties and services covered. The following language will be added to the admission criteria for waiver services: "In lieu of waiver services the youth would regress and require institutionalization or inpatient hospital services in the community".

CMHB is proposing to update the therapeutic living chapter into two separate chapters: one for therapeutic youth group home services and another chapter for therapeutic family care services. Clarification will be added to the therapeutic family care chapter to indicate permanency level therapeutic family care services will only be authorized in foster care homes and not authorized in biological or postadoption homes.

The CMHB address and division name in (7) is being updated because the CMHB moved from the Health Resource Division to the Disability Services Division on July 1, 2009, and was subsequently renamed the Developmental Services Division.

6. The department proposes that the adoption of New Rule I and proposed rule changes to be applied effective July 1, 2010.

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: Gwen Knight, 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 13, 2010.

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

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

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

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

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State April 5, 2010

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

In the matter of the adoption of new)
rule I regarding the nonproprietary)
nature of utility executive)
compensation)

NOTICE OF PUBLIC HEARING
ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On May 18, 2010, at 1:30 p.m. the Department of Public Service Regulation, Montana Public Service Commission will hold a public hearing in the Bollinger Hearing Room, commission offices at 1701 Prospect Ave., Helena, Montana to consider the proposed adoption of a new rule addressing the nonproprietary nature of public utility executive compensation.

2. The Public Service Commission 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, contact Verna Stewart, Commission Secretary, P.O. Box 202601, Helena, MT 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; or e-mail vstewart@mt.gov no later than 5:00 p.m. on May 12, 2010, to advise us of the nature of the accommodation that you need.

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

RULE I PUBLIC UTILITY EXECUTIVE COMPENSATION (1) Each year, jurisdictional public utilities shall submit to the commission, the names and total company compensation including, but not limited to base salary, short-term (annual) incentive plan benefits, long-term incentive plan benefits, stock options, any supplemental benefit plans and perquisites, and compensation from the public utility affiliates of their executive management personnel in Montana. Executive management personnel in Montana are those persons whose responsibilities are material to the public interest determinations of the commission and whose total compensation exceeds \$100,000 per year. The utility executive total compensation information will not be treated as confidential information and will not be protected from public disclosure through issuance of a protective order by the commission.

(2) When a protective order is requested for salary information because the duties of the position are not material to the public interest determination by the commission, the commission will not issue a protective order if the position's duties include any of the following:

(a) Oversee diverse activities for multiple work units or major organizational functions and which have responsibility for integrating work or multiple organizational units to align them with the company's established goals and objectives;

(b) Secure and allocate human and financial resources to accomplish goals;
and

(c) Develop and establish organizational standards goals, objectives, business plans and evaluate organizational performance.

(3) Adoption of this rule does not preclude the commission from seeking and securing other information from regulated businesses.

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-106, 69-3-201, 69-3-203, 69-3-330, MCA

4. The commission proposes to adopt the new rule to assure all regulated public utility executives are afforded notice that the commission has determined that because such executives' responsibilities and actions are material to the public interest determinations of the commission and to the commission's ability to fully regulate Montana's public utilities as contemplated in 69-3-102 and 69-3-106, MCA, the commission has determined that the public's right to know exceeds the expectation of individual privacy. The commission will not issue protective orders to protect from public disclosure the total compensation of public utility executives.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments (original and ten copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601 and must be received no later than May 18, 2010 at 5:00 p.m., or may be submitted to the commission through the commission's web-based comment form at <http://psc.mt.gov> (go to "Contact Us," "Comment on Proceedings Online," then complete and submit the form) no later than May 18, 2010. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L10-4-1.RUL")

6. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

7. An electronic copy of this Notice of Public Hearing is available on 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. However, the commission advises that it will decide any conflict between the official version and the electronic version in favor of the official printed version. 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 commission maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the commission. Persons who wish to have their name added to the list shall make a written request which includes that name, e-mail address, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities,

providers, and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and/or administrative procedures. Such written requests may be mailed or delivered to the Public Service Commission, Legal Division, 1701 Prospect Ave., P.O. Box 202601, Helena, MT 59620-2601, faxed to Verna Stewart at (406) 444-7618, e-mailed to vstewart@mt.gov, or may be made by completing a request form at any rules hearing held by the commission.

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

/s/ Greg Jergeson
Greg Jergeson, Chairman
Public Service Commission

/s/ Robin McHugh
Reviewed by Robin McHugh
Montana Public Service Commission

Certified to the Secretary of State April 5, 2010.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I) NOTICE OF PUBLIC
and amendment of ARM 42.4.201, 42.4.203,) HEARING ON PROPOSED
42.4.204, 42.4.205, 42.4.206, and 42.4.207,) ADOPTION AND
relating to energy conservation credit) AMENDMENT

TO: All Concerned Persons

1. On May 10, 2010, at 1:30 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption and amendment of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., May 3, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

NEW RULE I STANDARDS AND RATINGS (1) For investments in products installed on or after July 1, 2010, the following applicable specification must be met or exceeded to qualify for the credit:

(a) Exterior windows and skylights-U factor and SHGC less than or equal to 0.30;

(b) Storm windows-U factor and SHGC less than or equal to 0.30 when measured in combination with the exterior window over which it is installed;

(c) Exterior doors-U factor and SHGC less than or equal to 0.30;

(d) Storm doors-U factor and SHGC less than or equal to 0.30 when measured in combination with the exterior window over which it is installed;

(e) Split system central air conditioning-EER greater than or equal to 13 and SEER greater than or equal to 16;

(f) Package system central air conditioning-EER greater than or equal to 12 and SEER greater than or equal to 14;

(g) Split system air source heat pumps-HSPF greater than or equal to 8.5, EER greater than or equal to 12.5 and SEER greater than or equal to 15;

(h) Package system air source heat pumps-HSPF greater than or equal to 8, EER greater than or equal to 12.5 and SEER greater than or equal to 14;

- (i) Natural gas or propane furnace-AFUE greater than or equal to 95;
- (j) Oil furnace-AFUE greater than or equal to 90;
- (k) Hot water boiler-AFUE greater than or equal to 90;
- (l) Advanced main air circulating fan-no more than 2% of total energy use;
- (m) Heat recovery ventilators-CSA C439-00 standard;
- (n) Gas, oil, or propane water heater-energy factor greater than or equal to 0.82 or thermal efficiency of at least 90%;
- (o) Electric heat pump water heater-energy factor greater than or equal to 2.0.

AUTH: 15-1-201, 15-32-105, MCA

IMP: 15-32-102, 15-32-105, 15-32-106, 15-32-109, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to establish new standards to help taxpayers better determine whether an investment qualifies for the energy conservation credit. The ratings listed are the same as the ratings required to qualify for the 2010 federal energy credits. They apply to investments in existing structures as well as new construction so calculating the credit for a newly constructed home or building will be simpler.

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

42.4.201 DEFINITIONS The following definitions apply to this subchapter:

(1) "AFUE" means annual fuel utilization efficiency rating for furnaces and boilers expressed as the ratio of energy output to energy input.

(2) "Building" means an enclosed structure with external walls and a roof that is used for commercial, industrial, or agricultural purposes, or a single or multiple dwelling, including a mobile, manufactured, or modular home. This includes single units within multi-unit complexes such as apartment complexes, condominiums, and commercial complexes.

(3) "Customer" is defined as a retail purchaser or distribution service provider.

(4) "Dwelling" means a building or unit that is habitually occupied as a residence. It does not include a guest house or vacation home that is occupied only occasionally. It does include a guest house or vacation home if they are usually occupied as someone's residence.

(5) "EER" means Energy Efficiency Ratio and is a measure of how efficiently a cooling system will operate when the outdoor temperature is at a specific level (95°F).

~~(4)~~(6) "Energy factor" is the efficiency rating for water heaters. A higher percentage indicates higher efficiency.

~~(5)~~(7) "ENERGY STAR" is a program of the U.S. Environmental Protection Agency, which identifies high efficiency products and equipment.

~~(6)~~(8) "GAMA" means Gas Appliance Manufacturers Association, which is an independent agency for rating space and water heating devices.

~~(7)~~(9) "Heat recovery ventilator" is a device or system designed and installed

to provide balanced fresh air ventilation for homes and to transfer energy from the outgoing air stream to the incoming air stream.

~~(8)~~(10) "HSPF" means heating season performance factor, which is a measure of the heating efficiency of a heat pump system expressed as a ratio of Btu per watt-hour.

~~(9)~~(11) "HVI" means Home Ventilating Institute, which is a rating agency for home ventilation products.

~~(40)~~(12) "IECC" means the current International Energy Conservation Code, which is the current energy code version adopted by the state of Montana and enforced statewide as adopted by the Montana Department of Labor and Industry.

~~(44)~~(13) "Manufactured home" means a home built on a nonremovable steel chassis or frame. Each transportable unit of a manufactured home has a red certification label on the exterior section and is built according to Manufactured Home Construction and Safety Standards (HUD Code).

(14) "Mobile home" is defined in 15-1-101, MCA, and means a form of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding eight feet in width or 45 feet in total length designed to be moved from one place to another by an independent power connected to them, or any trailer, housetrailer, or trailer coach up to eight feet in width or 45 feet in length used as a principal residence. The term does not include any trailer, housetrailer, or trailer coach unless it is a dwelling as defined in this rule.

~~(42)~~(15) "Modular home" means a home built in a factory setting in units, transported to the home site, placed on a permanent foundation, and joined.

~~(43)~~(16) "~~National Fenestration Rating Council~~" (~~NFRC~~) "NFRC" means National Fenestration Rating Council means which is the independent agency that rates windows, doors, and skylights.

~~(44)~~(17) "New construction" means construction of, or additions to, buildings, living areas, or attached garages that comply with the established standards of new construction as determined by the building code statutes in Title 50, MCA.

(18) "SEER" means Seasonal Energy Efficiency Ratio and is a measure of equipment the total cooling of a central air conditioner or heat pump (in Btu) during the normal cooling season as compared to the total electric energy input (in watt-hours) consumed during the same period.

(19) "SHGC" refers to the solar heat gain coefficient, and is a measure of how well a window blocks heat from sunlight. The SHGC is the fraction of the heat from the sun that enters through a window.

(20) "U-factor" refers how well a product prevents heat from escaping. The rate of heat loss is indicated in terms of the U-factor of a window assembly.

AUTH: 15-1-201, 15-32-105, MCA

IMP: 15-32-105, 15-32-109, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.201 to add definitions for SEER, SHGC, and U-factor so that taxpayers can better understand the terms used when the minimum rating or standard of an item is listed. Definitions of the terms "dwelling" and "mobile home" are being added and the definition of "building" enhanced so that taxpayers can more easily determine

which structures they can make improvements to that qualify for the credit.

42.4.203 CREDIT FOR ENERGY CONSERVATION INVESTMENT

~~(1) For new construction, items installed prior to July 1, 2010, Eligible are eligible investments for the energy conservation credit in new construction are the if the investments that meet or exceed the requirements described in ARM 42.4.206.~~

The amount of credit can be calculated using one of the following provisions:

(a) The credit can be based on the actual additional amount expended to exceed the requirements of the IECC with the Montana amendments. For example, if a taxpayer installs an ENERGY STAR qualified furnace in a new construction project, the incremental cost of equipment and installation costs above a conventional furnace required by code qualifies for the energy conservation credit.

(b) The purchase by the first owner or construction of a new ENERGY STAR qualified site-built home can be considered the equivalent of investing \$2,000 for energy conservation purposes resulting in a total credit of \$500 ($\$2,000 * 25\%$). The \$500 may be allocated among the individuals who purchased the home. Verification must be made by a third party accredited by the federal Environmental Protection Agency to rate homes under the ENERGY STAR program. The resale of an ENERGY STAR home does not qualify for the credit.

(c) The purchase by the first owner or construction of a new site-built home certified as attaining a Silver or Gold level under the Montana Building Industry Association Green Building program and having an ENERGY STAR heating system can be considered the equivalent of investing \$2,000 for energy conservation purposes resulting in a total credit of \$500 ($\$2,000 * 25\%$). The \$500 may be allocated among the individuals who purchased the home. Certification must be made by a National Green Building Certification verifier accredited by the National Association of Home Builders. The resale of a Montana Building Industry Association Green Building certified home does not qualify for the credit.

(2) For new construction, items installed on or after July 1, 2010, are eligible investments for the energy conservation credit if the investments meet or exceed the specifications described in [NEW RULE I]. A taxpayer may still calculate the amount of credit using the provisions described in (1).

~~(2)(3)~~ For investments in existing buildings installed prior to July 1, 2010, a credit will be given for capital investments listed in ARM 42.4.204 that are recognized to substantially reduce the waste or dissipation of energy, or reduce the amount of energy required for proper utilization of the building.

(4) For investments in existing buildings installed on or after July 1, 2010, a credit will be given for capital investments listed in ARM 42.4.204, which meet or exceed the specifications described in [NEW RULE I] where applicable.

~~(3)(5)~~ A credit under 15-32-109, MCA, will not be allowed for an investment for which a credit under 15-32-115 or 15-32-201, MCA, is claimed.

~~(4)(6)~~ A credit will not be allowed for capital investments that are directly used in a production or manufacturing processor rendering a service to customers.

~~(5)(7)~~ Only investments in buildings located in Montana qualify for the energy conservation credit.

~~(6) See ARM 42.4.118 for filing requirements.~~

AUTH: 15-1-201, 15-32-105, MCA

IMP: 15-32-102, 15-32-105, 15-32-106, 15-32-109, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.203 to coordinate the language with the adoption of NEW RULE I. The ratings for the federal energy credits listed in NEW RULE I are higher than the current IECC standards so investments in items that qualify for the federal credit will clearly qualify for the Montana credit. The changes make it easier for taxpayers to determine whether the investment qualifies and how much credit they may be entitled to claim.

42.4.204 CAPITAL INVESTMENTS FOR QUALIFYING ENERGY

CONSERVATION CREDIT (1) The following capital investments are those that exclusively qualify for the conservation of energy credit ~~for tax year 2009~~:

- (a) insulation in existing buildings of floors, walls, ceilings, and roofs;
- (b) insulation in new construction of floors, walls, ceilings, and roofs, to the extent it exceeds the requirements of the IECC with Montana amendments;
- (c) insulation of heating and air conditioning pipes, insulation and sealing of heating, ventilation, and air conditioning (HVAC) ducts, and insulation of hot-water heaters and tanks;
- (d) windows that result in reduction of energy consumption;
- (e) storm doors;
- (f) insulated exterior doors;
- (g) caulking and weather stripping except when it is a standard component in the construction or maintenance of the structure such as the chinking and caulking in a log home;
- (h) devices which limit the flow of hot water from shower heads and lavatories;
- (i) heat recovery ventilators (HRV);
- (j) glass fireplace doors installed in an existing conventional fireplace;
- (k) exhaust fans used to reduce air conditioning requirements;
- (l) replacement of incandescent light fixtures with light fixtures of a more efficient type such as those with electronic ballast and compact or linear fluorescent lamps and LED lights;
- (m) lighting controls with cutoff switches to permit selective use of lights;
- (n) programmable thermostats;
- (o) replacement of an existing domestic water heater or heating or cooling system with:
 - (i) a new one of the same style or type that has a higher efficiency rating, whether or not the new water heater or heating or cooling system meets or exceeds the established standards for new construction provided in ARM 42.4.205; and
 - (ii) a new one that is of a different style or type that exceeds the requirements for new construction provided in ARM 42.4.206, but only for the additional cost of exceeding the standard; and
 - (p) installation as part of new construction of a water heater or heating or cooling system that exceeds established standards for new construction provided in ARM 42.4.206(1)(c), but only for the additional cost of exceeding the standard.
- (2) If the new system described in (1)(o) differs in style or type from the previous system, such as, if one or more window air-conditioning units is replaced

with a central air system, the new system must exceed the requirement in ARM 42.4.206(1)(c). If the replacement system exceeds the established standards, only the additional cost shall be considered when computing the credit.

(3) For capital investments made on or after July 1, 2010, the items listed in (1)(a) through (p) must meet or exceed the standards as described in [NEW RULE I]. The new construction provisions described in (1)(o)(ii) and (1)(p) are not applicable to investments made on or after July 1, 2010.

AUTH: 15-1-201, 15-32-105, MCA

IMP: 15-32-102, 15-32-105, 15-32-106, 15-32-109, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.204 to add detail to the description of two items on the list of qualifying investments based on common questions from taxpayers. The changes add more precise descriptions and conform the specific items with the initial intent of the credit. The department is also proposing to amend ARM 42.2.204 to coordinate the language with the adoption of NEW RULE I.

42.4.205 CALCULATION OF THE TAX YEAR FOR CLAIMING THE ENERGY CONSERVATION CREDIT AND MULTIPLE UNITS OR INVESTORS

~~(1) Taxpayers are entitled to an energy conservation credit for energy conservation investments made to existing buildings and new construction. The energy conservation credit is available in the tax year that the taxpayer paid for and completed the installation of the energy conservation investments.~~

(2) For an existing building, an example of how the credit would be applied is:

(a) The taxpayer purchased and completed installation of an ~~ENERGY STAR~~ qualifying furnace in the taxpayer's home during October ~~2005~~ of year one, half of the total price of the furnace was paid for in ~~2005~~ year one and the other half in ~~2006~~ year two. The energy conservation credit is available in tax year ~~2005~~ year one only and the taxpayer is not entitled to an additional energy conservation credit for the second half payment made in ~~2006~~ year two.

(b) The taxpayer purchased a qualifying hot water heater in ~~2006~~ year one but did not have it installed until spring ~~2007~~ of year two. The energy conservation credit is available in ~~2007~~ year two only and the taxpayer can include the money expended in ~~2006~~ year one to purchase the hot water heater in calculating the credit.

(c) The taxpayer made a down payment in December ~~2006~~ of year one to have qualifying windows installed in the spring of ~~2007~~ year two. After the installation was completed in the spring, final payment was made. The energy conservation credit is available in ~~2007~~ year two only and the taxpayer can include the money expended in ~~2006~~ year one for the down payment in calculating the credit.

(3) For new construction, the energy conservation credit is available in the tax year that the construction is completed. An example of how the credit would be applied is:

(a) The taxpayer began construction of a new home in ~~2004~~ year one and finished it in ~~2005~~ year two. The taxpayer ~~invested~~ made investments in energy

conservation measures that ~~exceeded the 2003 International Energy Conservation Code with Montana amendments~~ qualify for the credit according to the rules in this subchapter. The energy conservation credit is available in ~~tax year 2005~~ year two only and the taxpayer is not entitled to an energy conservation credit for ~~tax year 2004~~ year one even though the construction began in ~~2004~~ year one.

(4) A taxpayer who purchases a newly constructed manufactured or modular home may claim the credit if they purchase the ENERGY STAR upgrade package. The amount paid for the package is considered the qualifying expenditure for the purpose of determining the amount of credit. For example, a taxpayer who spends an additional \$1,800 for an ENERGY STAR upgrade can claim a credit of \$450.

(5) For multi-unit buildings such as apartment complexes and condominiums, an energy conservation credit will be allowed for each unit when it can be demonstrated that the expense was attributed to a specific unit. Examples of these expenditures are:

(a) ~~an ENERGY STAR~~ qualifying furnace that only serves one unit of a multi-unit building would qualify as one expenditure and one credit;

(b) ~~an ENERGY STAR~~ qualifying furnace that serves all units of a multi-unit building is considered only one energy conservation investment and would qualify as one expenditure and one credit; or

(c) installation of ~~an ENERGY STAR~~ qualifying furnace in each unit of a multi-unit building would qualify as a separate expenditure and credit for each unit.

(6) The energy conservation credit is available to all owners of a building who invest in energy conservation expenditures. Examples of this application are:

(a) A husband and wife replace windows and exterior doors with qualifying investments in their existing home for a total cost of \$6,000. Each spouse is entitled to a maximum \$500 energy conservation credit. ($\$6,000 \times .25 = \$1,500$ with a maximum credit of \$500 per individual.)

(b) Four individuals who own a commercial building replace windows, exterior doors and the heating system with qualifying investments for a total cost of \$20,000. Each individual is entitled to a maximum \$500 energy conservation credit. ($\$20,000 \times .25 = \$5,000$ with a maximum credit of \$500 for each individual.)

AUTH: 15-1-201, 15-32-105, MCA

IMP: 15-32-102, 15-32-105, 15-32-106, 15-32-109, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.205 in to remove specific years included in the examples. The examples are also being updated because ENERGY STAR products may not always qualify for the credit.

42.4.206 NEW CONSTRUCTION STANDARDS (1) For new construction, ~~expenditures for energy-conserving items installed prior to July 1, 2010, the energy-conserving expenditure~~ must meet or exceed the following equipment standards:

(a) air-source heat pumps - specification (split systems - greater than or equal to SEER 14.5, EER 12 and HSPF 8.2 or single package system - greater than or equal to SEER 14, EER 11 and HSPF 8) - reference (ENERGY STAR qualified);

(b) boilers - specification (rating of 85% AFUE or greater) - reference

(ENERGY STAR qualified);

(c) central air conditioners - specification (split systems - greater than or equal to 13 SEER - single package system - greater than or equal to 12 SEER) - reference (ENERGY STAR qualified);

(d) demand or instantaneous water heaters - specifications (gas-fired instantaneous - .82 or greater energy factor and electronic ignition) - reference (GAMA directory rating certified);

(e) furnaces - specifications (rating of 90% AFUE or greater) - reference (ENERGY STAR qualified);

(f) heat recovery ventilators - specifications (CSA C439-00 standard) - reference (HVI certified product);

(g) indirect water heaters - specifications (high efficiency) - reference (minimum of two inches foam insulation);

(h) light fixtures - specifications (electronic ballast and compact or linear fluorescent lamp) - reference (ENERGY STAR qualified);

(i) skylights - specifications (skylights must have a U-factor of .60 or less and meet ENERGY STAR qualifications) - reference (National Fenestration Rating Council (NFRC) window label);

(j) thermostats - specifications (programmable thermostat) - reference (ENERGY STAR qualified); and

(k) windows and doors - specifications (windows and doors must have a U-factor of .35 or less and meet ENERGY STAR qualifications - reference (National Fenestration Rating Council (NFRC) window label).

(2) In order to qualify for energy conservation credits for new construction, energy-conserving expenditures for items installed prior to July 1, 2010, the energy-conserving expenditure must exceed the following Montana prescriptive path requirements:

(a) ceilings - R-49;

(b) crawlspace walls - R-20;

(c) exterior walls - R-21;

(d) finished basement walls - R-11;

(e) floors over unconditioned spaces - R-21;

(f) heating/cooling equipment - federal minimum standards;

(g) slab perimeter area four feet vertical or horizontal - R-13; and

(h) windows U-factor - U-.35.

AUTH: 15-32-105, MCA

IMP: 15-32-105, 15-32-109, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.2.206 to coordinate the language with the adoption of NEW RULE I. For investments made on or after July 1, 2010, the standards in this rule will no longer apply and the standards in NEW RULE I will apply.

42.4.207 RECORD RETENTION REQUIREMENTS (1) ~~In order to claim the energy conservation credit, the~~ A taxpayer claiming the credit is required to retain invoices, sales agreements, or receipts that document the work done and the

equipment installed. The records should clearly state the equipment manufacturer, make and model number of any installed item or product that will determine the qualifications for the energy conservation credit.

AUTH: 15-1-201, 15-32-105, MCA

IMP: 15-32-105, 15-32-106, 15-32-109, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.207 to make the rule easier to read and understand.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than May 14, 2010.

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

7. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." 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.

8. 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 notices 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 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer
Certified to Secretary of State April 5, 2010

/s/ Alan Peura
ALAN PEURA
Deputy Director of Revenue

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | | |
|--|---|----------------------|
| In the matter of the adoption of New Rule I, |) | NOTICE OF PUBLIC |
| amendment of ARM 42.4.104, 42.4.105, |) | HEARING ON PROPOSED |
| 42.4.110, 42.4.118, 42.4.4101, 42.4.4105, |) | ADOPTION, AMENDMENT, |
| 42.4.4106, 42.4.4107, 42.4.4108, 42.4.4109, |) | AND REPEAL |
| 42.4.4112, 42.4.4114, and 42.4.4115, and |) | |
| repeal of ARM 42.4.106, 42.4.4102, |) | |
| 42.4.4103, 42.4.4104, 42.4.4111, and |) | |
| 42.4.4113, relating to individual energy tax |) | |
| credits |) | |

TO: All Concerned Persons

1. On May 10, 2010, at 2:30 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption, amendment, and repeal of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., May 3, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

NEW RULE I INDIVIDUAL ENERGY-RELATED TAX BENEFITS (1) A resident individual who installs an alternative energy system that uses recognized nonfossil fuels to provide heat in their principal residence is allowed a credit for up to \$500 of the cost against their individual income tax liability. If the credit exceeds their tax liability, it is not refundable, but may be carried forward for four years.

(a) ARM 42.4.104 describes systems that qualify for the credit. ARM 42.4.105 addresses standard components of conventional structures that do not qualify and the components of passive solar systems that do.

(b) The credit is allowed for a "low-emission wood or biomass combustion device." For tax years beginning after 2008, the definition was expanded to include a wood burning appliance that is qualified for the phase 2 white tag under the U.S. environmental protection agency method 28 OWHH for outdoor hydronic heaters,

and a wood burning appliance that uses wood pellets as its primary source of fuel without regard to any emission standard.

(c) Geothermal systems fall within the definition of an alternative energy system, but a separate and larger credit of up to \$1,500 is allowed for part of the cost of installing a geothermal system. Geothermal and alternative energy system credits may not be claimed for the same geothermal system or expenditures. The geothermal credit may be claimed by a resident individual installing a geothermal system in their existing principal residence or in a new principal residence they are constructing, or by the builder constructing the new residence, but not both.

(2) A credit against individual income tax is also provided to resident individuals for energy conservation investments in dwellings and in buildings used for commercial, industrial, and agricultural purposes. The credit is allowed for making some recognized energy conservation improvements to the physical attributes of existing structures, such as insulation, doors, and windows, if they meet specified energy conservation standards. The credit is also allowed for making energy conservation improvements to water, heating, and cooling systems in existing buildings if they meet specified energy conservation standards. The items allowed and the minimum standards are also set forth in ARM 42.4.202. Investment in a wood burning device that does not meet the energy conserving standards in ARM 42.4.202 does not qualify for the energy conserving credit provided in 15-32-109, MCA, but may qualify for the alternative energy system credit provided in 15-32-201, MCA, and ARM 42.1.104 if it is installed to provide heat for the taxpayer's principal dwelling.

AUTH: 15-1-201, 15-32-203, MCA

IMP: 15-32-102, 15-32-109, 15-32-115, 15-32-201, 15-32-202, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to help the taxpayer understand how the alternative energy credit and the energy conservation credit are different. This rule also distinguishes the geothermal system as being available for a separate and larger credit. The department intends to place this new rule in Title 42, chapter 4, subchapter 1.

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

42.4.104 ENERGY GENERATING SYSTEMS INSTALLED TO EXISTING STRUCTURES (1) ~~For energy generating systems installed to existing structures and not integral to the structure's original construction, the energy generating system must be one that fits the description in 15-32-102, MCA, and one that is either generally recognized as a nonfossil energy generating system (recognized by the Department of Environmental Quality or the alternative energy industry) or one that the applicant can demonstrate is energy generating.~~ Various tax benefits are allowed for investments in "recognized nonfossil forms of energy generation." The term "recognized nonfossil forms of energy generation" is defined in 15-32-102, MCA, and ARM 42.4.110. The term does not include commercial or net metering systems, which may be eligible for a separate credit as described in subchapter 41

of this chapter. In this rule, the term "alternative energy generating systems" is used generically to describe all of the recognized nonfossil forms of energy generation listed in ARM 42.4.110.

~~(2) Systems determined to be acceptable include, but are not limited, to the following:~~

~~(a) Solar greenhouses, sun porches, and like structures that are properly situated, constructed, and ducted to the buildings for which they provide energy to be reasonably considered a complete or supplementary energy source for that building.~~

~~(b) Solar collectors with systems for providing energy to existing structures (example: solar energy panels).~~

~~(c) Components of a structure that have been altered for energy collection, storage, and/or distribution to benefit the rest of the structure. An example would be enclosed porches with the addition of triple glazed windows. The value added by the triple glazed windows is exempt.~~

~~(d) Stoves or furnaces, or catalytic converters added to stoves or furnaces which burn wood or other nonfossil biomass and which have an emission rate of less than six grams per hour.~~

(2) The tax benefits for installing an alternative energy generating system are:

(a) a credit against their individual income tax liability to resident individuals who install the generating system to provide heat for their principal dwelling (equal to the cost of the system, including installation costs, less grants received, not to exceed \$500) as provided in 15-32-201, MCA;

(b) if the system uses a "low emission wood or biomass combustion device" as defined in 15-32-102, MCA, and ARM 42.4.110, that a resident individual installs to provide heat for their principal dwelling, a credit against their individual income tax equal to the cost of the system, including installation, not to exceed \$500, as provided in 15-32-201, MCA;

(c) if the energy generating system is a geothermal system that transfers energy from the ground by way of a closed loop or from ground water by way of an open loop that a resident individual installs in their principal dwelling to heat or cool the dwelling, a credit against their individual income tax equal to a portion of the installation costs of the system, not to exceed \$1,500, as provided in 15-32-115, MCA;

(d) if the energy generating system is a geothermal system described in subsection (2)(c), that is installed by a builder constructing a new residence to heat or cool the dwelling, a credit against the builder's individual or corporation license tax liability, as applicable, equal to a portion of the installation costs of the system, not to exceed \$1,500, as provided in 15-32-115, MCA;

(e) a property tax exemption for a portion of the appraised value of a capital investment in the alternative energy generating system for ten years after installation, as described in 15-6-224, MCA, and ARM 42.19.1104 (the system may be installed in a residential dwelling or a commercial structure); and

(f) a property tax exemption for machinery and equipment used in qualifying small electric generating systems that are powered by an alternative renewable energy source, as described in 15-6-225, MCA, and ARM 42.4.4105.

(3) Energy generating systems ~~which~~ that are standard components of conventional structures do not qualify for the property tax exemption provided in 15-6-224, MCA, or the income tax alternative energy system credit provided in 15-32-201, MCA. ARM 42.4.110 defines standard components.

~~(a) Windows installed in excess of "double-glazing."~~

~~(b) Thermal collection masses such as brick, stonework, and other types that were not present in the original structure and were not installed for a purpose other than energy storage.~~

~~(c) Energy collection, generation, and distribution equipment related solely to recognized nonfossil energy generation systems.~~

(4) To qualify for the property tax exemption provided in 15-6-224, MCA, or the alternative energy system credit provided in 15-32-201, the predominant use of the alternative energy system must be energy generation. The predominant use of an applicant's a system will be determined as other than is not energy generating if it possesses any two of the following characteristics:

(a) ~~It~~ it is a structure that will be occupied more than four hours in a day;:

(b) ~~It~~ it is a structure that serves as a regularly used entry way to the building for which it provides energy;:

(c) ~~It~~ it is a structure that receives heat from a source other than the energy it generates;:

(d) ~~It~~ it is a structure that contains more space than is reasonably necessary for energy collection, generation, and distribution (about 200 to 230 sq. ft. to provide heat to a building with at least 1,000 sq. ft. of living area);: or

(e) ~~It~~ it is part of the living area of the structure for which it provides energy.

~~(5) In determining the amount of property tax exemption and the calculation of the income tax credit for energy generating systems installed to existing structure, the following criteria must be met:~~

~~(a) The system must qualify for the property tax exemption and the income tax credit.~~

~~(b) The system description should be recorded on the property diagram located on the appraisal record card for property tax exemption purposes.~~

~~(c) No value for the system should be recorded on the appraisal record card for the property tax exemption.~~

~~(6) The property tax exemption will apply by excluding the energy system from valuation for a period as determined in ARM 42.19.1104. Meeting the minimum system standards imposed to obtain a federal tax credit for solar energy systems, including solar water heating and photovoltaic systems, or for geothermal, wind energy, or fuel cell systems, is not a condition of qualifying for the Montana alternative energy system or geothermal system credits.~~

(6) The credits against individual income tax liability described in (2)(a) and (2)(b) are claimed on form ENRG-B, Alternative Energy System Credit. The credits for the geothermal systems described in (2)(c) and (2)(d) are claimed on form ENRG-A, Geothermal System Credit.

AUTH: 15-1-201, 15-32-105, 15-32-203, MCA

IMP: 15-6-201, 15-6-224, 15-6-225, 15-32-102, 15-32-105, 15-32-115, 15-32-201, 15-32-202, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.104 to implement legislative changes set forth in House Bill 262, (Ch. 334, L. 2009). The rule has been reorganized to enhance understanding of the credits and to point the taxpayer to the statute and rules that cover the property tax exemptions for alternative energy generating systems. The amendments are also necessary to explain clearly which tax benefits apply to alternative energy generation systems and the forms and procedures for claiming them. The implementing citation for the property tax exemption was deleted because 15-6-224 and 15-6-225, MCA, not 15-6-201, MCA, provide for the property tax exemptions for certain alternative energy properties. The implementation citation for geothermal was added (15-32-115, MCA) because it is a form of an alternative energy generation for which a credit is provided to certain individuals and builders. The implementation cite for establishing the necessary elements of the definition of a passive solar system, including the defining standard components of conventional buildings (15-32-105, MCA), was added because this rule implements that provision. Requirements for the property tax exemption are deleted because they are included in ARM 42.19.1104.

~~42.4.105 ENERGY GENERATING SYSTEMS INTEGRAL TO A STRUCTURE'S ORIGINAL CONSTRUCTION STANDARD COMPONENTS AND PASSIVE SOLAR SYSTEMS~~ (1) ~~For energy generating systems that are integral to a structure's original construction, the energy generating system must be one that fits the description in 15-32-102, MCA, and one that is either generally recognized as a nonfossil energy generating system (recognized by the Department of Environmental Quality or the alternative energy industry) or one that the applicant can demonstrate is energy generating. Energy generating systems or their components that are standard components of conventional buildings do not qualify for the alternative energy system credit. The department is authorized to adopt rules defining standard components of conventional buildings and to establish other necessary elements of passive solar systems.~~

~~(2) Systems that have been determined to be acceptable are:~~

~~(a) "Envelope house" using a recognized nonfossil form of energy generation.~~

~~(b) Structures with energy systems qualifying under ARM 42.4.104 which have been installed as part of the original construction, such as solar greenhouses. Passive solar energy systems, or the components of those systems that have been determined to be acceptable include:~~

~~(a) solar greenhouses, sun porches, and like structures that are properly situated, constructed, and ducted to the building for which they provide energy to be reasonably considered a complete or supplementary energy source for that building;~~

~~(b) components of a building that have been altered for energy collection, storage, or distribution to benefit the rest of the building, such as the addition of triple glazed windows to enclosed porches;~~

~~(c) windows installed in excess of "double-glazing;"~~

~~(d) thermal collection masses such as brick, stonework, and other types that were not present in the original structure and were not installed for a purpose other than energy storage; and~~

(e) the components of an envelope house necessary for energy generation and distribution in the "envelope house," such as the "envelope" area devoted solely to energy collection, storage, and distribution.

~~(3) Energy generating systems which are components of conventional structures do not qualify for the property tax exemption or the income tax credit.~~

~~(4) Components recognized as nonstandard are:~~

~~(a) The components necessary for energy generation and distribution in an "envelope house," such as the "envelope" area devoted solely to energy collection, storage, and distribution.~~

~~(b) Components as described in ARM 42.4.104.~~

~~(5) The predominant use of an applicant's system will be determined as other than energy generating if it does not meet the requirements described in ARM 42.4.104.~~

~~(6) In determining the amount of property tax exemption and the calculation of the income tax credit for energy generating systems that are integral to a structure's original construction, the following criteria must be met:~~

~~(a) The system must qualify for the property tax exemption and the income tax credit.~~

~~(b) The size, quality, grade, condition, and other characteristics of the structure should be determined and the structure valued as a conventional building with the energy system excluded from the appraisal.~~

~~(c) The energy components should be recorded on the property diagram on the appraisal record card for property tax exemption purposes.~~

~~(d) A notation should be made on the appraisal record card that property tax exemption for the energy generating portion of the system has been applied.~~

~~(7) The property tax exemption will apply by excluding the energy system from valuation for a period as determined in ARM 42.19.1104.~~

AUTH: 15-1-201, 15-32-105, 15-32-203, MCA

IMP: 15-6-201, 15-32-102, 15-32-105, 15-32-201, 15-32-202, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.105 to improve readability and public understanding of the rule. No substantive changes have been made to this rule.

An authorization cite for the limitations on new construction and an implementation cite for this credit have been added.

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

(1) "EPA" means the United States Environmental Protection Agency.

(2) "Low emission wood or biomass device" means:

(a) a wood-burning appliance certified as meeting EPA standards of performance for new residential wood heaters in 40 C.F.R. 60.533;

(b) a wood-burning out-door hydronic heater that qualifies for the EPA's phase 2 white tag (meets the EPA's Phase 2 emission levels) under EPA test method 28 OWHH;

(c) a masonry heater constructed or installed in compliance with the requirements for masonry heaters in the International Residential Code of One- and Two-Family Dwellings; and

(d) an appliance that uses wood pellets as its primary source of fuel, regardless of the level of emissions.

(3) "Passive solar system" is defined in 15-32-203, MCA, and means a direct thermal energy system that uses the structure of the building and its operable components to provide heating or cooling during the appropriate times of the year by using the climate resources available at site.

(4) "Principal dwelling" means an individual's main home and excludes second homes, vacation or recreational property, and rentals.

(5) "Recognized nonfossil forms of energy generation" is defined in 15-32-102, MCA, and means:

(a) a system that captures energy for use or converts energy into usable sources using:

(i) solar energy (including a passive solar system);

(ii) wind;

(iii) solid waste;

(iv) decomposition of organic wastes;

(v) geothermal;

(vi) fuel cells that do not require hydrocarbon fuel;

(vii) a low emission wood or biomass device; and

(viii) small hydropower plants under one megawatt;

(b) a system that produces electric power from biomass or solid wood wastes; and

(c) a system that uses water power by means of an impoundment that is not over 20 acres in surface area.

(6) "Standard components of conventional structures" are those structures that are generally necessary for structural support, shelter, ventilation, temperature control, lighting, or maintenance of the occupant's regular life style.

AUTH: 15-1-201, 15-32-203, MCA

IMP: ~~15-6-201~~, 15-32-102, 15-32-115, 15-32-201, 15-32-202, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.110 to implement legislative changes set forth in HB 262, (Ch. 334, L. 2009), and to expand the definitions that apply to the recognized nonfossil forms of energy generation and dwellings for which an individual income tax credit is allowed.

The implementation cite that refers to entities exempt from property tax has been removed. An implementation cite for the geothermal credit has been added.

42.4.118 ENERGY AND CONSERVATION MULTIPLE INVESTORS CLAIMING THE ALTERNATIVE ENERGY SYSTEM INDIVIDUAL INCOME TAX CREDITS

(1) A Montana individual income tax credit is allowed by filing an Individual Income Tax Return and the appropriate supplemental forms developed by the department. The return and supplemental forms must be filed by the 15th day of the fourth month following the close of the taxpayer's tax year and mailed to the

Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805.

~~(a) To qualify for the geothermal energy system credit allowed under 15-32-115, MCA, a taxpayer must file form ENRG-A providing information as prescribed on the form at the time the Montana Individual Income Tax Return is filed.~~

~~(b) To qualify for the alternative energy system credit using a recognized nonfossil form of energy generation or through the installation of a low-emission wood or biomass combustion device under 15-32-201, MCA, a taxpayer must file form ENRG-B providing information as prescribed on the form at the time the Montana Individual Income Tax Return is filed.~~

~~(c) If more than one qualifying individual invests in a qualifying alternative energy system under 15-32-201, MCA, each may claim the credit provided the total of the credits claimed by all the individuals does not exceed the amount spent. For example, if a married couple invests \$1,200 in a qualifying wood stove, they can each claim \$500. However, if the same couple invests only \$800 in a qualifying wood stove, the combined amount claimed cannot exceed \$800.~~

AUTH: 15-1-201, 15-32-203, MCA

IMP: 15-32-115, 15-32-201

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.118 because instructions on how to claim the credits is being added to ARM 42.4.104.

42.4.4101 ALTERNATIVE ENERGY PRODUCTION CREDIT DEFINITIONS

The following definitions apply to this subchapter:

~~(1) "Appropriate time period" as referenced in 15-32-403, MCA, is defined as a one-year period beginning January 1 and ending December 31. "Alternative renewable energy source" is defined in 15-6-225, MCA, and means an inexhaustible source of energy that is not in general commercial use and specifically includes:~~

~~(a) solar, wind, and geothermal energy;~~

~~(b) the conversion of biomass;~~

~~(c) fuel cells that do not require hydrocarbon fuel;~~

~~(d) small hydroelectric generators producing less than one megawatt of electricity; and~~

~~(e) methane from solid waste.~~

~~(2) "Customer" is defined as a retail purchase or distribution service provider. "Commercial system" means a depreciable system that generates, by means of an alternative renewable energy source, electricity for the purpose of sale and includes the generating equipment, safety devices and storage components, transmission lines needed to connect with existing transmission facilities, and transmission lines needed to connect directly to the purchaser of the electricity when no other transmission facilities are available.~~

~~(3) "Net metering system" is defined in 69-8-103, MCA, and means a depreciable electrical energy generating facility with a generating capacity of 50 kilowatts or less that:~~

~~(a) is located on a customer-generator's premises;~~

~~(b) uses solar, wind, or hydropower as its fuel;~~

(c) operates in parallel with a public or cooperative utility's distribution facilities;
and

(d) is intended primarily to offset part or all of the customer-generator's needs for electricity.

(3)(4) "Placed in service" as referenced in 15-32-404, MCA, shall begin when the new industry endeavor begins commercial operation. means the tax year the commercial system or net metering system is placed in a condition or state of readiness to generate electricity by means of an alternative renewable energy source.

AUTH: 15-1-201, ~~15-30-305~~, 15-30-2620, 15-31-501, ~~15-32-105~~, 15-32-407,
MCA

IMP: ~~15-30-304~~, ~~15-32-109~~, 15-32-402, 15-32-404, ~~15-35-103~~, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.4101 to define the terms used to describe the two categories of systems that are, since 2001, eligible for the alternative energy production tax credit (commercial and net metering systems).

In addition, two obsolete definitions have been deleted. The definitions relate to section 15-32-403, MCA, which has been repealed and ARM 42.4.4102, which is being repealed in this notice.

The department is proposing to amend ARM 42.4.4101 to update the authority and implementing citations to reflect the recodification of Title 15, chapter 30 in HB 24, (Ch.147, L. 2009), to include the corporation license tax rule-making authority and the specific authority for this credit, and to remove incorrect cites to provisions related to the energy conservation credit and the coal severance tax.

The implementation cites are being amended to remove incorrect references to the energy conservation credit, the individual income tax requirement of providing federal tax returns, and the coal severance tax. An implementing cite has been added to reflect the substantive changes made to the rule.

42.4.4105 ALTERNATE RENEWABLE ENERGY GENERATION FACILITIES PROPERTY TAX EXEMPTION - LESS THAN ONE MEGAWATT (1) and (2) remain the same.

AUTH: 15-1-201, 15-1-217, MCA

IMP: 15-6-225, ~~15-31-501~~, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.4105 to help differentiate between the property tax incentives and the income tax incentives in this subchapter. In addition, an incorrect implementation cite for corporation license tax has been removed.

42.4.4106 APPEAL RIGHTS (1) For energy-related property tax exemptions or property tax rate reductions, an applicant may appeal the department's decision to the State Tax Appeal Board within 30 days of receiving notice of denial from the department.

(2) For energy-related income tax ~~or reduced tax rate~~ credits, an applicant

may appeal the department's decision to the Office of Dispute Resolution in accordance with ARM 42.2.311 through 42.2.326 within 30 days of receiving notice from the department.

AUTH: 15-1-201, MCA

IMP: 15-1-211, 15-2-302, 15-31-501, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.4106 to remove the reference to a reduced tax rate credit, which does not exist under the current statute, and to distinguish between property tax incentives and income tax incentives in this subchapter.

42.4.4107 COMMERCIAL USE AND OTHER REQUIREMENTS FOR COMMERCIAL AND NET METERING SYSTEMS ELIGIBLE FOR THE INCOME TAX CREDIT (1) ~~With regard to 15-32-404, MCA, the investment must be made in certain depreciable property qualifying under section 38 of the IRC of 1986, as amended, for a commercial system or a net metering system, as defined in 69-8-403, MCA. The credit against individual income and corporation license taxes provided in 15-32-402, MCA, is limited to 35% of the eligible costs for investments in depreciable commercial systems and net metering systems. Property placed in service for personal use does not qualify for this credit, but may qualify for the alternative energy system credit provided in 15-32-201, MCA, and ARM 42.4.104.~~

(2) The credit may not be claimed against taxes generally, but can only be applied against taxes due as a result of Montana taxable or net income produced by certain manufacturing plants, energy sales to new or expanded business facilities, or the alternative energy generating equipment itself. The determination of this income and associated tax is made on form AEPC, Alternative Energy Production Credit. Examples of qualification for the credit are:

(a) Company A manufactures windmills in Montana. Company A invests in and installs windmills to supplement the electricity needs of its manufacturing plant. Company A can claim the credit to offset taxes on income from sale of the windmills.

(b) Company B invests in a windmill farm. Company C is a new manufacturing plant in Montana. Company B enters into a direct sales contract to sell electricity to Company C. Company B is eligible to claim the credit to offset taxes on income from the sale of electricity to Company C.

(c) Company D invests in a windmill farm. Company D sells the electricity generated by its windmill farm to the power grid. The credit is available for Company D to offset taxes on income from the sale of the electricity.

(3) The alternative energy production credit is not available to offset taxes on income from new or expanded business facilities. The following example describes nonqualification for the credit:

(a) Company E invests in a new business facility in Montana. Company E installs a windmill that is connected to a net metering system. The windmill provides energy for the new business facility. The credit is not available for Company E to offset taxes on income from the operations of the new business facility.

AUTH: ~~15-30-305,~~ 15-30-2620, 15-31-501, 15-32-407, MCA

IMP: 15-31-501, 15-32-402, 15-32-403, 15-32-404, 15-32-406 69-8-103, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.4107 to give taxpayers a summary and examples of the income tax credit and its limitations according to the language in the statute. The department has had several questions about the circumstances described in example (3)(a) in recent months. The wording of the 15-32-402(1)(b), on first reading seems to imply that the credit is available to offset income from a new or expanded business. However, careful reading of the statute clearly shows that the income available for offset is from the sales of energy to the new or expanded business, as described in Example (2)(b).

The authority citations are being updated to reflect the recodification of Title 15, chapter 30 in HB 24, (Ch. 147, L. 2009). The implementation citations are being amended to remove an incorrect reference to the corporation license tax rule-making authorization and a repealed statute, and they are being updated to include the income tax allocation code section because the rule is being substantively expanded to address the requirements for claiming the credit.

42.4.4108 PROPERTY TAX EXEMPTION - NONCOMMERCIAL ELECTRICAL GENERATION MACHINERY AND EQUIPMENT (1) and (2) remain the same.

AUTH: 15-1-201, MCA

IMP: 15-6-225, 15-6-226, 15-31-501, 75-2-211, 75-2-215, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.4108 to change the implementing cite to correct the statute that provides the exemption because 15-6-226, MCA, was repealed in 2001. Sections 75-2-211, and 75-2-215, MCA apply to air quality standards.

42.4.4109 WIND ALTERNATIVE ENERGY INCOME TAX CREDITS FOR GENERATION FACILITIES LOCATED WITHIN EXTERIOR BOUNDARIES OF A MONTANA INDIAN RESERVATION - TRIBAL EMPLOYMENT AGREEMENT

(1) To qualify for the 15-year carry-forward provision authorized in 15-32-404, MCA, for investing in a five megawatt or larger commercial system located within the exterior boundaries of a Montana Indian reservation, a copy of the signed agreement with the tribal government of the reservation must be attached to the applicable tax return filed for the first taxable period for which the credit is reported.

(2) remains the same.

AUTH: 15-1-201, 15-30-2620, 15-31-501, 15-32-407, MCA

IMP: 15-31-501, 15-32-402, 15-32-403, 15-32-404, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.4109 to change the title of the rule to inform taxpayers about the 2001 amendment to 15-32-402, MCA, which expanded the credit to apply to systems that produce energy from "alternative energy sources" rather than "wind power", and to

define this as an income tax incentive. The 2001 amendment also allows for the extension of the credit carryforward under certain circumstances and the change to the rule describes those conditions.

The authorization statutes have been updated to add rulemaking authority for individual income tax and corporation license tax. The implementing cite has been changed to correctly reflect the repeal of 15-32-403 and to delete the implementing cite for corporation license tax.

42.4.4112 RECORDS REQUIRED - AUDIT (1) Taxpayers shall maintain records necessary to support ~~the application for tax exemption, reduced tax rate, or their entitlement to and qualification for the property tax exemption, property tax abatement, or income tax credit.~~

(2) ~~Such~~ For the Alternative Energy Production Credit, such records shall must include: ~~specified documentation set forth in ARM 42.4.4104.~~

(a) if the alternative energy renewable source is a small hydroelectric generator producing less than one megawatt of electricity or the commercial system is a five megawatt or larger system located within the exterior boundaries of a Montana Indian reservation, source documents detailing the total capacity of the system;

(b) total investment in the commercial or net metering system;

(c) gross revenues associated with the commercial or net metering system;

(d) expenses associated with the commercial or net metering system; and

(e) if the alternative energy equipment supplies the basic energy needed to a new or expanded business facility as referenced in 15-32-402(1)(b), MCA, a copy of the direct sales contract.

(3) The records shall be maintained by the taxpayer for the appropriate statutory period of time that the property tax exemption, reduced tax rate, property tax abatement, or income tax credit may be received by the taxpayer, plus one year. Such records shall be subject to audit by the department at any time during the period to determine whether the provisions of the contract are being met.

AUTH: 15-1-201, ~~15-30-305~~, 15-30-2620, 15-31-501, 15-32-407, MCA

IMP: 15-24-3001, ~~15-31-501, 15-32-403, 15-35-103~~, 15-32-402, 15-32-404, 15-32-405, 15-32-406, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.4112 to reflect that this rule does not include the Electrical Generation and Transmission Facility benefits outlined in 42.4.4102 and 42.4.4104 because 15-24-3001, MCA is allowed only for facilities constructed before January 1, 2006, and no facilities are currently eligible for the exemption. Rules 42.4.4102 and 42.4.4104 are being repealed in this notice.

The rule expands the language to describe the types of incentives available as related either to property tax or to income tax.

In order to prevent any unanticipated problems for the taxpayer, the changes provide the taxpayer information about the types of records that will be needed during an audit of the Alternative Energy Production Credit. Corrections were also made to the authorization and implementation citations.

42.4.4114 ENERGY PRODUCTION OR DEVELOPMENT - PROPERTY TAX ABATEMENT ELIGIBILITY FOR NEW INVESTMENT IN THE CONVERSION, TRANSPORT, MANUFACTURE, RESEARCH, AND DEVELOPMENT OF RENEWABLE ENERGY, CLEAN COAL ENERGY, AND CARBON DIOXIDE EQUIPMENT AND FACILITIES (1) through (6) remain the same.

AUTH: 15-24-3116, MCA

IMP: 15-6-141, 15-6-157, 15-6-158, 15-6-159, 15-24-3101, 15-24-3102, 15-24-3111, 15-24-3112, 15-24-3116, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.4114 to change title and distinguish between property tax incentives and income tax incentives in this subchapter.

42.4.4115 PROPERTY TAX EXEMPTION FOR LAND ADJACENT TO TRANSMISSION LINE RIGHT-OF-WAY OR EASEMENT (1) through (5) remain the same.

AUTH: 15-24-3116, MCA

IMP: 2-15-1763, 15-6-229, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.4115 to change title and to distinguish between property tax incentives and income tax incentives in this subchapter.

5. The department proposes to repeal the following rules:

42.4.106 OTHER ENERGY GENERATING SYSTEMS which can be found on page 42-425 of the Administrative Rules of Montana.

AUTH: 15-1-201, 15-32-203, MCA

IMP: 15-6-201, 15-32-201, 15-32-202, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.4.106 because this rule's content is being added to 42.4.104 and 42.4.105.

42.4.4102 ELECTRICAL GENERATION AND TRANSMISSION FACILITY - QUALIFICATION AND PUBLICATION which can be found on page 42-641 of the Administrative Rules of Montana.

AUTH: 15-1-201, 15-30-305, 15-31-501, 15-32-407, MCA

IMP: 15-24-3001, 15-32-403, 15-35-103, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.4.4102 because the property tax exemption provided in 15-24-3001, MCA, is allowed only for facilities constructed before January 1, 2006, and no tax credit or

reduced tax rate applies to these facilities. ARM 42.4.4107 governs the credit for commercial and net metering systems that generate electricity using alternative energy sources.

42.4.4103 ELECTRICAL GENERATION AND TRANSMISSION FACILITY - REPORTING which can be found on page 42-642 of the Administrative Rules of Montana.

AUTH: 15-1-201, 15-30-305, 15-31-501, 15-32-407, MCA
IMP: 15-24-3001, 15-32-403, 15-35-103, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.4.4103 because the property tax exemption provided in 15-24-3001, MCA, is allowed only for facilities constructed before January 1, 2006, and no tax credit or reduced tax rate applies to these facilities. ARM 42.4.4107 governs the credit for commercial and net metering systems that generate electricity using alternative energy sources.

42.4.4104 ELECTRICAL GENERATION AND TRANSMISSION FACILITY - VERIFICATION which can be found on page 42-642 of the Administrative Rules of Montana.

AUTH: 15-1-201, 15-30-305, 15-31-501, 15-32-407, MCA
IMP: 15-24-3001, 15-32-4003, 15-35-103, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.4.4104 because the property tax exemption provided in 15-24-3001, MCA, is allowed only for facilities constructed before January 1, 2006, and no tax credit or reduced tax rate applies to these facilities. ARM 42.4.4107 governs the credit for commercial and net metering systems that generate electricity using alternative energy sources.

42.4.4111 DEDUCTIBILITY OF IMPACT FEE FOR LOCAL GOVERNMENT AND SCHOOL DISTRICTS which can be found on page 42-645 of the Administrative Rules of Montana.

AUTH: 15-30-305, 15-31-501, MCA
IMP: 15-24-3005, 15-30-111, 15-30-121, 15-31-501, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.4.4111 because it has nothing to do with the alternative energy production credit and should be adopted, if needed because the impact fee is required to be capitalized for federal income tax purposes, in ARM Title 42, chapter 15, part 2, for individual income tax, and in ARM Title 42, chapter 23, part 4 for corporation license tax purposes.

42.4.4113 REQUEST FOR INFORMATION which can be found on page 42-

645 of the Administrative Rules of Montana.

AUTH: 15-1-201, 15-30-305, 15-32-407, MCA

IMP: 15-24-3001, 15-31-501, 15-32-403, 15-35-103, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.4.4113 because the property tax exemption provided in 15-24-3001, MCA, is allowed only for facilities constructed before January 1, 2006, and no facilities are eligible for this incentive. ARM 42.4.4104 which addresses for the exemption is also being repealed.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than May 14, 2010.

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

8. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." 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.

9. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 6 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Bob Ebinger was contacted on July 14, 2009, by regular mail.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State April 5, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I) NOTICE OF PUBLIC
relating to value before reappraisal for 2009) HEARING ON PROPOSED
agricultural land) ADOPTION

TO: All Concerned Persons

1. On May 10, 2010, at 11:00 a.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of the above-stated rule.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., May 3, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

NEW RULE I CORRECTION OF VALUE BEFORE REAPPRAISAL (VBR) FOR 2009 AGRICULTURAL LAND (1) For those properties that experienced productivity only changes for tax year 2009, the department will correct the VBR as follows:

(a) If the taxpayer timely filed an AB-26, County Tax Appeal Board (CTAB) appeal, State Tax Appeal Board (STAB) appeal, or District Court action relating to the 2009 assessment the department will:
(i) replace the calculated VBR with the prior year VBR of the prior grade;
(ii) issue a revised assessment notice for 2009 showing the correct VBR; and
(iii) provide the county the information necessary to allow the county to issue a new tax bill.

(b) If the taxpayer did not timely file an AB-26, CTAB appeal, STAB appeal, or District Court action relating to the 2009 assessment the department will correct the VBR calculation beginning in tax year 2010.

(c) The department will correct the VBR and adjust the taxable values each year for the subsequent five years of this reappraisal cycle by one-fifth of the difference in taxable value.

(i) The difference in taxable value is the amount that the department either under or over assessed in 2009.

(ii) The adjusted taxable value will be used by the counties to apply mill levies to determine taxes owed.

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

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

REASONABLE NECESSITY: The department is proposing to adopt New Rule I because the department adopted ARM 42.20.502 in 1997, and amended it in 2002. ARM 42.20.502 directed the department to use the prior year VBR for the current year VBR during 2002 or subsequent tax years. ARM 42.20.502 specified the VBR for class three property. For class three property that contains a productivity or grade change, the current year VBR will be the prior year VBR of the prior grade.

The new reappraisal cycle began January 1, 2009, pursuant to 15-7-111, MCA. The department updated its agricultural manual for this new reappraisal cycle. The department did not timely update ARM 42.20.502. The updated agricultural manual required a calculated VBR rather than the 2008 full reappraisal value. The calculated VBR resulted in an incorrect application of phase-in for properties with productivity only changes. By adopting New Rule I, the department is correcting the phase-in for these properties to comport to the requirements of ARM 42.20.502, as amended in 2002.

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: 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 May 14, 2010.

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

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." 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.

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 notices 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. 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 5, 2010

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

| | | |
|-------------------------------------|---|----------------------|
| In the matter of the amendment of |) | AMENDED NOTICE AND |
| ARM 44.3.104, 44.3.2014, 44.3.2015, |) | EXTENSION OF COMMENT |
| 44.3.2109, 44.3.2113, 44.3.2114, |) | PERIOD ON PROPOSED |
| 44.3.2401, 44.9.202, 44.9.301, |) | AMENDMENT |
| 44.9.303, 44.9.305, 44.9.307, |) | |
| 44.9.312, 44.9.315, 44.9.402, and |) | |
| 44.9.404 pertaining to elections |) | |

TO: All Concerned Persons

1. On February 25, 2010, the Secretary of State published MAR Notice No. 44-2-158 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 520 of the 2010 Montana Administrative Register, Issue Number 4.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on April 22, 2010, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana, 59620-2801; telephone (406) 461-5173; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

3. The Secretary of State is extending the comment period because it has revised the statements of reasonable necessity for the proposed amendments to ARM 44.3.104 and ARM 44.3.2114 pursuant to e-mailed comments received from David Niss on behalf of the State Administration and Veterans' Affairs Interim Committee. Sections 2-4-305(8)(b) and (c), MCA, require that an agency must use an amended proposal notice to correct any deficiencies in a statement of reasonable necessity.

4. The statements of reasonable necessity are being amended as follows, new matter underlined, deleted matter interlined:

44.3.104 GUIDELINES FOR POLLING PLACE ACCESSIBILITY
(1) remains as proposed.

REASON: ~~As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes.~~ The foregoing rule amendment eliminates outdated standards for polling place accessibility and reflects the changes made to the election laws during the legislative session.

44.3.2114 PROVISIONAL VOTING PROCEDURES ON ELECTION DAY
AFTER THE CLOSE OF POLLS - THE SIXTH DAY AFTER ELECTION DAY

(1) through (12) remain as proposed.

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendments ~~add a voter's designated agent, clarify that identity and eligibility need to be verified, allow voters to verify signatures by mail or in person and to correct other minor issues by several different methods, require a ballot to be handled as a provisional ballot if issues are not resolved, and reflect the statutory changes made during the legislative session.~~

44.9.315 INACTIVE ELECTORS IN MAIL BALLOT ELECTIONS

(1) and (2) remain as proposed.

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendments reflect the statutory changes made to 13-2-222 and 13-19-307, MCA, during the legislative session to clarify that a person may reactivate registration by voting in a mail ballot election.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana, 59620-2801; telephone (406) 461-5173; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., April 29, 2010.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 5th day of April, 2010.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM) NOTICE OF REPEAL
2.21.5005, 2.21.5006, 2.21.5007,)
2.21.5008, and 2.21.5011 pertaining)
to reduction in work force)

TO: All Concerned Persons

1. On February 11, 2010, the Department of Administration published MAR Notice No. 2-21-417 regarding a notice of public hearing on the proposed repeal of the above-stated rules at page 253 of the Montana Administrative Register, Issue Number 3.

2. The Department of Administration has repealed ARM 2.21.5005, 2.21.5006, 2.21.5007, 2.21.5008, and 2.21.5011 as proposed.

3. A hearing was held on March 11, 2010. No one appeared and no comments were received.

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 5, 2010.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
4.10.201, 4.10.202, 4.10.203, 4.10.205,)
4.10.206, 4.10.207, 4.10.209, 4.10.311,)
4.10.313, 4.10.502, 4.10.503, 4.10.1101,)
4.10.1103, 4.10.1106, 4.10.1109, and)
4.10.1501 relating to pesticide)
administration)

TO: All Concerned Persons

1. On February 25, 2010, the Montana Department of Agriculture published MAR Notice No. 4-14-193 relating to the public hearing on the proposed amendment of the above-stated rules at page 457 of the 2010 Montana Administrative Register, Issue Number 4.

2. On March 18, 2010, the Montana Department of Agriculture held a public hearing on the proposed amendment of the above-stated rules.

3. No comments or testimony were received.

4. The department has amended ARM 4.10.201, 4.10.202, 4.10.203, 4.10.205, 4.10.206, 4.10.207, 4.10.209, 4.10.311, 4.10.313, 4.10.502, 4.10.503, 4.10.1101, 4.10.1103, 4.10.1106, 4.10.1109, and 4.10.1501 exactly as proposed.

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 5, 2010.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

| | |
|---|--------------------------|
| In the matter of the amendment of ARM) | NOTICE OF AMENDMENT |
| 17.38.106 pertaining to fees) | |
|) | (PUBLIC WATER AND SEWAGE |
|) | SYSTEM REQUIREMENTS) |

TO: All Concerned Persons

1. On December 24, 2009, the Board of Environmental Review published MAR Notice No. 17-297 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 2421, 2009 Montana Administrative Register, issue number 24.

2. The board has amended the rule exactly as proposed.

3. No public comments or testimony were received.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

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

Certified to the Secretary of State, April 5, 2010.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

| | |
|--|---------------------|
| In the matter of the amendment of ARM) | NOTICE OF AMENDMENT |
| 17.24.1109 pertaining to bonding letters) | |
| of credit) | (MONTANA STRIP AND |
|) | UNDERGROUND MINE |
|) | RECLAMATION ACT) |

TO: All Concerned Persons

1. On December 24, 2009, the Board of Environmental Review published MAR Notice No. 17-298 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 2426, 2009 Montana Administrative Register, issue number 24.

2. The board has amended the rule exactly as proposed.

3. No public comments or testimony opposing adoption of the amendments or proposing modification of those amendments were received.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

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

Certified to the Secretary of State, April 5, 2010.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

| | | |
|--|---|------------------|
| In the matter of the amendment of |) | CORRECTED NOTICE |
| ARM 24.17.127 related to prevailing |) | OF AMENDMENT |
| wage rates for public works projects - |) | |
| building construction services, heavy |) | |
| construction services, highway |) | |
| construction services, and |) | |
| nonconstruction services |) | |

TO: All Concerned Persons

1. On October 29, 2009, the Department of Labor and Industry (department) published MAR Notice No. 24-17-238 regarding the public hearing on the amendment of the above-stated rule at page 1840 of the 2009 Montana Administrative Register, Issue No. 20. On February 11, 2010, the department published the notice of amendment of the above-stated rule at page 399 of the 2010 Montana Administrative Register, Issue No. 3.

2. ARM 24.17.127 incorporates by reference various prevailing wage rate publications that are published by the department. On March 24, 2010, the department became aware that there was a data entry error made as part of the recalculation of the wage and fringe benefit rates for the occupational classification of Ironworker-Structural Steel and Rebar Placer in District 8. That data entry error caused the rates to erroneously be changed from the proposed rates. The correct rate for the occupation of Ironworker-Structural Steel and Rebar Placer in District 8 is the wage rate of \$24.75, and the fringe benefit rate of \$13.80, which are the rates as originally proposed. The rates printed in "The State of Montana Prevailing Wage Rates – Building Construction Services" publication have been corrected.

3. None of the text of ARM 24.17.127, as amended effective February 12, 2010, has changed as a result of this corrected notice of amendment.

4. The replacement pages for this corrected notice were submitted to the Secretary of State on March 31, 2010.

/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 5, 2010

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF ADOPTION
RULES I through VI, regarding)
incumbent worker training grants)
program)

TO: All Concerned Persons

1. On February 25, 2010, the Department of Labor and Industry (department) published MAR Notice No. 24-22-242 regarding the proposed adoption of the above-stated rules at page 479 of the 2010 Montana Administrative Register, Issue Number 4.

2. On March 22, 2010, the department held a public hearing in Helena at which no members of the public made comments. No written comments were received during the comment period. However, during the comment period the department noted a typographic citation error in NEW RULE III.

3. The department has adopted the following rules as proposed:

NEW RULE I (24.22.301) DEFINITIONS

NEW RULE II (24.22.304) RECOGNITION OF A BEAR PROGRAM

NEW RULE IV (24.22.311) GRANT APPLICATION PROCEDURES

NEW RULE V (24.22.316) EVALUATION CRITERIA AND LIMITATIONS

NEW RULE VI (24.22.321) APPEAL PROCEDURE

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

NEW RULE III (24.22.307) GENERAL REQUIREMENTS (1) through (3) remain as proposed.

(4) The department shall verify the completeness of applications and ensure that each recommending entity has meaningfully evaluated each application in accordance with the incumbent worker training program grant award criteria, provided by ~~53-12-1218~~ 53-2-1218, MCA.

(5) through (8) remain as proposed.

AUTH: 53-2-1220, MCA

IMP: 53-2-1217, 53-2-1218, MCA

/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 on April 5, 2010.

BEFORE THE BOARD OF BARBERS AND COSMETOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.121.401 fees)

TO: All Concerned Persons

1. On December 10, 2009, the Board of Barbers and Cosmetologists published MAR Notice No. 24-121-7 regarding the public hearing on the proposed amendment of the above-stated rule, at page 2337 of the 2009 Montana Administrative Register, issue no. 23.

2. On January 13, 2010, a public hearing was held on the proposed amendment of the above-stated rule in Helena. No comments were received by the January 21, 2010 comment deadline.

3. The board has amended ARM 24.121.401 exactly as proposed.

BOARD OF BARBERS AND
COSMETOLOGISTS
WENDELL PETERSEN, 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 5, 2010

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 44.3.2403 and 44.3.2404)
pertaining to elections)

TO: All Concerned Persons

1. On February 25, 2010, the Secretary of State published MAR Notice No. 44-2-153 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 510 of the 2010 Montana Administrative Register, Issue Number 4.

2. The Secretary of State has amended the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 5th day of April, 2010.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 44.3.2203 pertaining to)
elections)

TO: All Concerned Persons

1. On February 25, 2010, the published MAR Notice No. 44-2-154 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 513 of the 2010 Montana Administrative Register, Issue Number 4.
2. The Secretary of State has amended the above-stated rule as proposed.
3. No comments or testimony were received.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 5th day of April, 2010.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I, II, and III pertaining to)
postelection audits)

TO: All Concerned Persons

1. On February 25, 2010, the Secretary of State published MAR Notice No. 44-2-156 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 516 of the 2010 Montana Administrative Register, Issue Number 4.

2. The Secretary of State has adopted the following rules as proposed: New Rules I (44.3.1718) and III (44.3.1720).

3. The Secretary of State has adopted the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE II (44.3.1719) SELECTION PROCESS FOR RANDOM-SAMPLE AUDIT (1) remains as proposed.

(2) A county exempt from the postelection audit requirements because it does not use a vote-counting machine or has a race that is within the margins of a recount pursuant to Title 13, chapter 16, part 2, MCA, shall notify the Secretary of State of its exemption no later than seven days after the election by submitting a ~~request~~ notice for exemption on the form approved by the Secretary of State.

(3) through (6) remain as proposed.

(7) The Secretary of State in collaboration with the counties will provide guidance to the counties as to ~~prescribe~~ the method the counties will use to ensure all individual precinct ballots, including but not limited to each precinct's absentee ballots, are accounted for in a manner that will correlate to a specific vote-counting machine. The ~~prescribed~~ method will ensure that the postelection audit is a blind count.

4. The Secretary of State has thoroughly considered the comments received. The comments received and the Secretary of State's responses are as follows:

COMMENT #1: The Secretary of State received the following e-mailed comment from David Niss on behalf of the State Administration and Veterans' Affairs Interim Committee regarding proposed NEW RULE II(2):

"The text of proposed rule II (2) states that a county must notify the secretary of its exemption 'no later than seven days after the election'. However, one of the statutes implemented by this rule, section 13-17-503(5)(b), MCA, states that the county must notify the secretary 'as soon as practicable'. It appears from the plain language of

the statute that if it's not 'practicable' for the county to notify the secretary within seven days, the county may notify the secretary of its exemption on the eighth day or the ninth day or whatever other later day it is 'practicable' for the county to give its notification. For this reason there appears to be a difference between the implemented statute and the language of the proposed new subsection (2) of the rule in that the rule appears to shorten the time provided for in the statute for a county to give its notice if it's not practicable for the county to do so in seven days. There are two reasons why the rule cannot alter the statute: first, because MAPA states in section 2-4-305(6)(a), MCA, that a rule must be 'consistent with and not in conflict with the statute' implemented. Secondly, several Montana Supreme Court opinions have dealt with the subject of rules that conflicted with statute and held that an agency cannot adopt that type of an administrative rule. In Dept. of Revenue v. Estate of Dwyer, 236 M 405 (1989), the Supreme Court held that rules determining what portion of an estate was subject to taxation conflicted with the statute and that the part of the rules that conflicted was of no effect. Likewise, in Bell v. State, 182 M 21 (1979), an administrative rule added a licensing examination to a statutory list of qualifications for a barber's license that didn't include the examination. The Supreme Court held the requirement for an examination to be unlawful. For both of the foregoing reasons, I recommend and request that the secretary not adopt the seven day time limit but use the 'as soon as practicable' standard from the statute. I'd further recommend that if the secretary of state believes the 'as soon as practicable' time period standard used in 13-17-503(5), MCA, to be too lenient, that you draft legislation for introduction in the 62d Session to amend that section of law to provide for the maximum seven day time period."

RESPONSE #1: The Secretary of State believes "as soon as practicable" is defined in 13-17-505(1), MCA, which states that the random selection process shall be conducted by the State Board of Canvassers no sooner than seven days after the election and no later than nine days after the election. Because the counties must notify the Secretary of State of their exemption before the random selection process takes place in order to not include the county's precincts in the random selection to be audited, the logical extension when notification from the county must be received from the county is no later than seven days after the election. Therefore, the Secretary of State will leave the seven day requirement in the rule.

COMMENT #2: The Secretary of State received the following e-mailed comment from David Niss on behalf of the State Administration and Veterans' Affairs Interim Committee regarding proposed NEW RULE II(2):

"Concerning this same subsection of this rule, I also see that the statute contains an absolute exemption for a county, but most notify the secretary of the exemption. Subsection (2) of the same rule, however, provides that the county is to notify the secretary by 'submitting a request for exemption'. The ordinary use of the term 'request' indicates an application or petition that may or may not be granted by the secretary. The statute [sic], however, gives the secretary no such power to determine to grant or deny the county's 'request'. For this reason too, the rule seems contrary to the statute (for all of the reasons previously cited above) and I'd therefore

recommend and request that the language of the rule be change [sic] to indicate that the exemption is complete at least upon the receipt of the county's notification to the secretary."

RESPONSE #2: The Secretary of State has changed the word "request" in (2) to "notice."

COMMENT #3: The Secretary of State received the following e-mailed comment from David Niss on behalf of the State Administration and Veterans' Affairs Interim Committee regarding proposed NEW RULE II(7):

"In subsection (7) of proposed Rule II, the notice states that the secretary 'will prescribe' the method counties will use to ensure that precinct ballots are accounted for to correlate with a vote counting machine. By the reading of this language 'will prescribe' it appears that the notice intends that the method to be used by the counties will not be adopted as a rule pursuant to MAPA; otherwise I would expect to see the method to be stated in this new rule. As I'm sure you appreciate, there's no way for the secretary to 'prescribe' a method to be used by the counties that is enforceable by the secretary. This is because only administrative rules adopted in accordance with MAPA have any force and effect as law. The decision by the Montana Supreme Court in State v. Vainio, 306 M 439 (2001) and previous cases cited in that opinion makes this abundantly clear. For that reason, I'd recommend that the language of the rule make clear that the method chosen by the secretary, whatever that is and wherever it appears as guidance to the counties, is only to be considered as 'advice' by the counties and is not legally binding upon them in terms of the force and effect of the secretary's prescription of [sic] the counties choose not to follow that advice."

RESPONSE #3: The Secretary of State has removed the word "prescribed" from the text of (7) and substituted language stating the Secretary of State will "provide guidance to the counties." The Secretary of State has broad authority under 13-1-201 and 13-1-202, MCA, as the chief elections officer for the state to provide the election administrators with written directives and instructions relating to and based on election laws.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 5th day of April, 2010.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 44.6.111 pertaining to fees)
charged by the Business Services)
Division for the Farm Bill Master List)

TO: All Concerned Persons

1. On March 11, 2010, the Secretary of State published MAR Notice No. 44-2-163 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 644 of the 2010 Montana Administrative Register, Issue Number 5.
2. The Secretary of State has amended the above-stated rule as proposed.
3. No comments or testimony were received.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 5th day of April, 2010.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA
AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: **Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|---------------|---|
| Known Subject | 1. Consult ARM Topical Index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2009. This table includes those rules adopted during the period October 1, 2009, through December 31, 2009, and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2009, 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 2009 and 2010 Montana Administrative Register.

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