ISSUE NO. 15

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

Page Number

SPECIAL NOTICE AND TABLE SECTION

BEFORE THE TEACHERS' RETIREMENT SYSTEM
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.44.304 and 2.44.524 pertaining to the qualifications of the actuary engaged by the teachers' retirement system and the annual report of employment earnings by disabled retirees of the teachers' retirement system	)))))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On October 14, 2010, the Teachers' Retirement System of the State of Montana proposes to amend the above-stated rules.

2. The Teachers' Retirement System 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 Teachers' Retirement System no later than 5:00 p.m. on August 16, 2010, to advise us of the nature of the accommodation that you need. Please contact Melissa Michalk, Teachers' Retirement System of the State of Montana, 1500 E. Sixth Avenue, P.O. Box 200139, Helena, Montana, 59620-0139; telephone (406) 444-3754; fax (406) 444-2641; TDD (406) 444-1421; or e-mail MMichalk@mt.gov.

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

2.44.304 QUALIFICATION OF THE ACTUARY (1) The actuary designated by the Teachers' Retirement Board, at a minimum, must ~~meet the qualification of an "enrolled actuary".~~:

(a) be a member of at least one of the following professional organizations, as designated:

(i) a Member of the American Academy of Actuaries;

(ii) a Fellow or Member of the American Society of Pension Professionals; or

(iii) an Associate or Fellow of the Society of Actuaries.

(b) comply with the qualification standards applicable to actuaries issuing statements of actuarial opinion as adopted by the American Academy of Actuaries, which qualification standards may be obtained from the American Academy of Actuaries, 1850 M Street NW, Suite 300, Washington, DC 20036, or on the Academy's web site at www.actuary.org; and

(c) comply with all applicable actuarial standards of practice (ASOPs) as adopted by the Actuarial Standards Board.

(2) The actuary designated by the Teachers' Retirement Board must comply with the identified qualifications at all times while engaged as the actuary for the

Teachers' Retirement System, including that the actuary must comply with the standards set forth in (1)(b) and (1)(c) as those standards may be amended from time to time by the adopting entity.

~~(2)~~(3) Upon request of the board, proof of ~~certification as an "enrolled actuary"~~ qualification must be provided.

AUTH: 19-20-201, MCA
IMP: 19-20-203, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed amendment of this rule is reasonably necessary to provide a more meaningful description of the minimum qualifications necessary for an actuary engaged by the board of the Teachers' Retirement System. The qualification standard currently imposed, that the actuary meet the qualification of an "enrolled actuary," may substantially limit the board's ability to engage an actuary whose particular or sole area of practice is with public pension systems. Enrolled actuary status is a certification status conferred by a joint board of the United States Department of Treasury and the United States Department of Labor, and is closely related to the conduct expected of actuaries with respect to private pension plans – those governed by the Employee Retirement Income Security Act of 1973 (ERISA).

The qualification standards for actuaries issuing statements of actuarial opinion adopted by the American Academy of Actuaries provide a more comprehensive and stringent set of qualification standards, including initial and continuing education requirements, which are specifically directed at ensuring that an actuary is qualified to issue statements of actuarial opinion in the United States. As the actuary engaged by the board is expressly engaged to issue statements of actuarial opinion specific to the needs and circumstances of a public pension plan, upon which the board can and will rely in administering the retirement system, a more comprehensive and stringent set of standards to establish qualification to do so will help ensure the soundness of the actuarial services being provided to the retirement system.

At this point in time, the qualification standards adopted by the American Academy of Actuaries represent the professional standard applied in the actuarial profession, and represent what the Teachers' Retirement Board believes is the "best practice" standard when engaging the services of an actuary on behalf of the retirement system.

The proposed amended rule also includes a new requirement for an appropriate level of membership in one of the professional societies that credentials actuaries practicing in the United States. This additional specification of a minimum qualification will ensure that any actuary engaged by the Teachers' Retirement Board will have been evaluated by a professional society and will have been found to meet applicable standards of education and professional experience to be a credentialed member. As well, credentialed membership in any of the professional

societies identified ensures that the actuary is subject to the counseling and disciplinary authority of the Actuarial Board for Standards and Discipline.

2.44.524 ADJUSTMENT OF DISABILITY ALLOWANCE FOR OUTSIDE EARNINGS (1) A ~~Disabled~~ disabled member~~s~~ who ~~are~~ is ~~gainfully employed~~ engaged in a gainful occupation must notify the T~~t~~eachers' R~~r~~etirement S~~s~~ystem within thirty days of being ~~employed~~ engaged in that occupation. Notification must include:

(a) name and address of employer, including if self-employed~~,~~;

(b) salary or hourly rate of pay and estimated yearly earnings~~,~~; and

(c) description of their duties and responsibilities and if the position is full-time or part-time.

(2) The disabled member must report to the Teachers' Retirement System, no less than annually, the total amount earned each year. Members are encouraged to report earnings each month so that the TRS can advise the member when they will earn more than allowed and adjust their benefit if necessary.

(3) A disabled member who is at least sixty years of age and is not engaged in a gainful occupation is not required to file an annual earnings statement if the disabled member has not been engaged in a gainful occupation and has reported no earnings for at least the three consecutive preceding years.

(4) A disabled member who is not required to submit an annual earnings statement by application of (3) will be required to resume submitting annual earnings statements if the disabled member again becomes gainfully employed, and must continue to submit annual earnings statements until the disabled member again has not been gainfully employed and has reported no employment income for at least the three consecutive preceding years.

AUTH: 19-20-201, MCA
IMP: 19-20-904, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed amendment of this rule is reasonably necessary to reduce administrative burden and expense to the retirement system and to disabled retirees of the retirement system. A review of retirement system records indicates that disabled members who are not gainfully employed at the time they reach the age of sixty, and have not had a recent history of gainful employment, will likely not return to gainful employment after that time. Therefore, the requirement that such members continue to submit annual statements of employment earnings represents a burden to those disabled members, and administrative burden and expense to the retirement system, with very little, if any, value provided to the retirement system. The Teachers' Retirement Board believes allowing such members to discontinue submitting annual earnings reports, on the condition that reports must resume if gainful employment is subsequently obtained, provides sufficient protection to the retirement system while giving appropriate consideration to the burden imposed on the retirement system's disabled members. Other changes were made simply to make the terminology used in the administrative rule consistent with statute and with the form letters used by the retirement system.

4. Concerned persons may submit their data, views, or arguments either orally or in writing to David L. Senn, Teachers' Retirement System of the State of Montana, 1500 E. Sixth Avenue, P.O. Box 200139, Helena, Montana, 59620-0139; telephone (406) 444-3376; fax (406) 444-2641; or e-mail dsenn@mt.gov, and must be received no later than 5:00 p.m., September 10, 2010.

5. If persons who are directly affected by the proposed actions 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 David L. Senn at the above address no later than 5:00 p.m. on Monday, September 10, 2010.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate 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 30 persons based on a total of 305 current recipients of disability retirement benefits from the Teachers' Retirement System.

7. The Teachers' Retirement System of the State of Montana 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 Teachers' Retirement System of the State of Montana.

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

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

By /s/ Denise Pizinni
Denise Pizzini
Rule Reviewer

By /s/ David L. Senn
David L. Senn
Executive Director
Teachers' Retirement System of the
State of Montana

Certified to the Secretary of State August 2, 2010.

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

In the matter of the amendment of ARM 37.5.117, 37.5.331, 37.79.201, 37.79.202, 37.79.206, 37.79.207, 37.79.301, 37.79.302, 37.79.303, 37.79.326, and 37.79.801 pertaining to Healthy Montana Kids Plan	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On September 1, 2010, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on August 24, 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:

37.5.117 CERTAIN TITLE 50 PROGRAMS AND OTHER PROGRAMS FOR WHICH NO PROCEDURE IS OTHERWISE SPECIFIED: APPLICABLE HEARING PROCEDURES (1) Hearings under the programs specified in this rule are available to the extent specifically provided by law, including the Montana Code Annotated and department rules. The provisions of ARM 37.5.311 and 37.5.318 do not apply to such hearings. Such hearings shall be conducted in accordance with the Montana Administrative Procedure Act and ARM 37.5.304, 37.5.307, 37.5.313, 37.5.316, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337.

(a) through (n) remain the same.

(o) requests for departmental review of final ~~grievance~~ decisions ~~by contractors~~ under the Healthy Montana Kids (HMK) Plan;

(p) through (v) remain the same.

AUTH: 50-1-202, 53-2-201, 53-4-1009, 53-6-113, MCA
IMP: 41-3-1103, 41-3-1142, 42-10-104, 50-1-202, 50-4-612, 50-5-103, 50-6-103, 50-6-402, 50-15-102, 50-15-103, 50-15-121, 50-15-122, 50-31-104, 50-52-102, 50-

53-103, 52-2-111, 53-2-201, 53-4-1004, 53-4-1009, 53-4-1105, 53-6-101, 53-6-111, 53-6-113, 53-6-402, 53-20-305, 53-24-208, MCA

37.5.331 NOTICE OF APPEAL AND REVIEW OF PROPOSAL FOR DECISION (1) remains the same.

(2) The notice of appeal must be made to and shall be decided by the Board of Public Assistance, Department of Public Health and Human Services, Office of Fair Hearings, P.O. Box 202953, Helena, MT 59620-2953 in cases arising from the following programs:

(a) through (f) remain the same.

(g) refugee assistance; ~~and~~

(h) mental health services plan~~.~~; and

(i) Healthy Montana Kids (HMK).

(3) through (8)(b) remain the same.

AUTH: 53-2-201, 52-2-704, 52-2-726, 53-2-201, 53-2-606, 53-4-212, 53-6-113, 53-7-102, MCA
IMP: 52-2-704, 53-2-201, 53-2-606, 53-4-1004, 53-4-1009, 53-4-1105, MCA

37.79.201 ELIGIBILITY (1) An applicant may be eligible for covered services under the HMK coverage group if:

(a) through (g) remain the same.

(h) for three months prior to enrollment the applicant ~~does not have or~~ has not had creditable private health insurance coverage ~~for three months prior to becoming eligible for the HMK coverage group~~. This requirement is waived ~~three month period does not apply~~ if the parent or guardian providing the insurance:

(i) through (viii) remain the same.

(ix) has insurance coverage that is not accessible (e.g. coverage is through an HMO in another state); ~~or~~

(x) loses Tricare military health insurance; or

(xi) has an annual aggregate amount of health insurance premiums and cost sharing expenses imposed for coverage of the family of a child which exceeds 5% of the family's income.

(2) ~~An applicant who is eligible for health benefits coverage under the Montana Employee's Health Insurance Plan or the Montana University System Employees Health Insurance Plan is not eligible for HMK coverage.~~ State of Montana and Montana University System employees' children may be eligible for the HMK coverage group under the following conditions: the family meets HMK income guidelines and the health insurance premiums and cost-sharing expenses exceed 5% of the family's income for the benefit year.

(3) and (4) remain the same.

(5) Family income must be verified to determine eligibility. The department will request documentation of income from the applicant and will access various electronic databases to verify income as needed.

(a) through (B) remain the same.

(b) Family income does not include:

(i) through (iv) remain the same.

(v) the interest earned on ~~(2)(b)(iii)~~ (5)(b)(iii) and (iv);

(vi) through (12) remain the same.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.202 NONQUALIFYING APPLICANTS (1) remains the same.

~~(2) Applicants who are themselves eligible or who have a parent who is eligible for state employee or the Montana University System employee insurance benefits are not eligible for the HMK coverage group.~~

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

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.206 ELIGIBILITY REDETERMINATION, NOTICE OF CHANGES

(1) Eligibility determinations shall be effective for a period of 12 months unless one or more of the following changes occurs:

(a) through (e) remain the same.

~~(f) the enrollee or the enrollee's parent becomes eligible for state employee or the Montana University System employee benefits before the expiration of the 12 month eligibility period;~~

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

(2) remains the same.

(3) An HMK renewal application must be completed and eligibility redetermined every 12 months. If the renewal application is not returned before the HMK coverage group enrollment is scheduled to end, benefits will terminate. A new application may be completed at a later date but, if the children are determined eligible, they may be placed on the waiting list if one exists.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.207 TERMINATION OF ELIGIBILITY AND GUARDIAN LIABILITY

(1) through (1)(b) remain the same.

(2) The HMK coverage group eligibility terminates at the end of the month the department becomes aware:

(a) remains the same.

~~(b) the parent or guardian or enrollee becomes eligible for state employee or Montana University System employee insurance benefits;~~

(c) through (h) remain the same but are renumbered (b) through (g).

(3) and (4) remain the same.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.301 COVERED BENEFITS (1) The following services, if medically necessary, are covered benefits:

(a) and (b) remain the same.

(c) emergency ambulance services provided in a licensed ambulance as that term is defined in 50-6-302, MCA;

(c) through (k) remain the same but are renumbered (d) through (l).

(2) through (4) remain the same.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.302 COVERAGE LIMITATIONS (1) ~~The lifetime maximum benefit coverage is one million dollars per enrollee.~~ There is no lifetime limit on the dollar value of benefits per enrollee.

(2) and (3) remain the same.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.303 BENEFITS NOT COVERED (1) In addition to any exclusions noted elsewhere in these rules, the following services are not covered benefits:

(a) through (n) remain the same.

(o) any medical transportation other than ambulance services;

~~(p) ambulance services;~~

(q) through (y) remain the same but are renumbered (p) through (x).

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1003, 53-4-1004, 53-4-1005, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.326 DENTAL BENEFITS (1) The maximum dental benefits paid under the basic dental plan will be 85% of the billed services received up to ~~$350~~ $1,000 paid per benefit year for each enrollee. For example, ~~$412~~ $1,176 in services received would result in ~~$350~~ $1,000 paid.

(a) remains the same.

(b) Providers may bill the enrollee, parent, or guardian for services received in excess of ~~$1,000~~ $1,176 per benefit year.

(2) Providers must bill for services using the procedure codes and modifiers set forth, and according to the definitions contained in the American Dental Association Manual of Current Dental Terminology ~~Third Edition (CDT-3)~~ (CDT 2009/2010).

(3) through (4) remain the same.

(5) Enrollees with significant dental needs beyond those covered in the basic dental plan may, with prior authorization, receive additional services through the HMK coverage group Extended Dental Plan (EDP). The EDP program is dependent on legislative appropriation for the program.

(a) An HMK coverage group enrollee determined eligible for extended dental benefits may receive additional services in the benefit year. The maximum EDP

payment to all dental providers for an enrollee's additional dental services is $1000 per benefit year.

(b) remains the same.

(c) The maximum basic and EDP payments combined is ~~$1350~~ $2,000 (~~$350~~ $1,000 basic plan and $1000 EDP) for a benefit year.

(6) and (7) remain the same.

AUTH: 53-4-1004, 53-4-1005, 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1003, 53-4-1004, 53-4-1005, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.801 GRIEVANCE AND APPEAL PROCEDURES (1) and (2) remain the same.

(3) An applicant, parent, or guardian aggrieved by a denial, suspension, or termination of the HMK coverage group eligibility or an enrollee, parent, or guardian aggrieved by a final grievance decision of a third party administrator, including but not limited to a reduction or denial of benefits, may request a fair hearing in accordance with ARM 37.5.304, 37.5.307, 37.5.313, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337.

(4) remains the same.

~~(5) A proposal for decision by the hearing officer is a final agency decision for purposes of 2-4-702, MCA and is subject to judicial review as provided in Title 2, chapter 4, part 7, MCA.~~

AUTH: 53-4-1009, MCA
IMP: 53-4-1003, MCA

4. The Department of Public Health and Human Services (the department) is proposing the amendment of ARM 37.5.117, 37.5.331, 37.79.201, 37.79.202, 37.79.206, 37.79.207, 37.79.301, 37.79.302, 37.79.303, 37.79.326, and 37.79.801 pertaining to Healthy Montana Kids Plan.

The department administers the Healthy Montana Kids (HMK) Plan, which is funded by the state and federal government to pay for covered health care services to low income Montana children. The department is proposing amendments and additions to current rules to comply with requirements of the Patient Protection and Affordable Care Act of 2010 (PPACA), to develop and/or amend current rules to reflect requirements and options of the Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009, to develop and/or amend current rules to reflect requirements and recommendations in Montana I-155, the Healthy Montana Kids Plan, and to amend current rules to reflect program policy changes.

ARM 37.5.117, 37.5.331, and 37.79.801

The department is proposing to amend ARM 37.5.117, 37.5.331, and 37.79.801 to remove any ambiguity in rules regarding the appeal procedures applicable to the HMK program. In October, 2006 the program, then known as CHIP, changed from a contracted insurance plan to a program that pays on a fee-for-service basis and

uses a contracted third party administrator (TPA). To implement this change the rules for grievances and appeal procedures were amended to provide the opportunity for appeal of a TPA's decision to the department's Office of Fair Hearing. The intent was to establish a hearing procedure consistent with other contested case proceedings at the department level, including appeal of a proposed decision to the Board of Public Assistance (BPA). Language was inadvertently left in ARM 37.79.801 stating that a hearing officer's decision was a final administrative order subject to judicial review. This conflicts with the procedural requirement that hearing officer decisions are proposed decisions that may be appealed to the BPA. The amendments to ARM 37.5.117, 37.5.331, and 37.79.801 remove the incorrect reference to appeal to district court and correctly reference the BPA.

ARM 37.79.201, 37.79.206, and 37.79.207

The department proposes to implement the PPACA option to cover eligible children of Montana state employees and Montana University System employees if approved by the Centers for Medicare and Medicaid Services (CMS). Title XIX of the Social Security Act (SSA), Section 2110(b)(2)(B) excluded children of families who were public employees from benefit coverage under state child health benefits plans. Section 10203(6)(C) of the PPACA, amended the SSA and allows CHIP programs to provide eligibility for children from families who are employees of public entities if their annual aggregate amount of premiums and cost-sharing would exceed 5% the family's income. Montana's wages are relatively low and many state and university employees are not able to cover the cost of health care for their children. Implementation of this option will increase children's access to health care services.

The department proposes to amend ARM 37.79.201(1)(h) to implement a "hardship exception" to the three month insurance delay period for eligible families who have an aggregate amount of health insurance premiums and cost-sharing expenses imposed for coverage of a family of a child which exceeds 5% of the family's income. Currently, many Montana families are hesitant to have their children be uninsured for three months. This is especially true for families who have children with chronic conditions, special health needs or require prescription medications on an ongoing basis.

ARM 37.79.202

The department proposes to update language in ARM 37.79.202 to reflect changes in ARM 37.79.201 providing coverage for eligible children of state of Montana and Montana University System employees.

ARM 37.79.301 and 37.79.303

The department proposes to add licensed ambulance services as a covered benefit in ARM 37.79.301 and delete ambulance services as a benefit not covered in ARM 37.79.303. Utilization of ambulance services in HMK claims history reveals the need for this benefit for children of low income families. This amendment adds coverage

for services provided by means of a privately or publicly owned motor vehicle or aircraft that is maintained and used for the transportation of patients. This amendment does not provide HMK coverage for transportation that does not offer skilled medical services. It does not allow coverage for transportation to or from nonemergent medical care.

ARM 37.79.302

The department proposes to delete language that limits the lifetime maximum payment to $1 million for HMK coverage group members. The PPACA of 2010, section 2711 removes maximum lifetime limits of group health plans and health insurers. HMK proposes removal of the lifetime limit to assure compliance with the PPACA.

ARM 37.79.326

The department proposes to amend this rule to increase the maximum basic dental payment from $350 to $1,000 per member per benefit year. This proposed change will affect all HMK members who utilize dental benefits and will allow access to needed dental services. During federal fiscal year (FY) 2009 approximately 12,000 CHIP members utilized basic dental services.

Fiscal Impact

It is estimated that 19,000 HMK enrollees and approximately 5,808 HMK participating providers may be impacted by the proposed rule amendments. The estimated fiscal impact of these rule changes will be $1.9 million in federal funds and $500,000 in state funds during FY 2011 and $4 million in federal funds and $1 million in state funds during FY 2012.

5. The department intends the rule amendments to be applied effective October 1, 2010. In the event the rules are amended retroactively no negative impact is anticipated.

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., September 9, 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/ Geralyn Driscoll
Rule Reviewer

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

Certified to the Secretary of State August 2, 2010.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.17.101 and 42.17.204, relating to withholding taxes	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On September 2, 2010, at 9:00 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 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., August 23, 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) 444-4375; or e-mail canderson@mt.gov.

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

42.17.101 DEFINITIONS The following terms pertain to this chapter:

(1) through (4) remain the same.

(5) "Lookback letter" means the letter sent to employers notifying them of their filing frequency for wage withholding.

(5) through (13) remain the same but are renumbered (6) through (14).

AUTH: 15-30-2547, 15-30-2620, MCA
IMP: 15-30-2501, 15-30-2538, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.101 to include a definition for the "lookback letter" as this term is included in several administrative rules and providing a definition will be beneficial to taxpayers.

42.17.204 REMITTANCE OF TAX BY EMPLOYERS (1) The remittance schedule is established annually by the department pursuant to 15-30-2504, MCA. On or before November 1 of each year, the department shall notify the employers of the employers' remittance schedules for the following calendar year based upon the department's review of the preceding lookback period. The lookback letter will not be sent to employers whose remittance frequency for the next calendar year remains the same.

(2) Every employer must report information to the department on an approved payment voucher ~~provided by the taxpayer~~ or upon alternative remittance methods in conjunction with the department's electronic remittance program. ~~The remittance schedule is established annually by the department pursuant to 15-30-2504, MCA.~~ The department may request any information from the employer necessary for the collection of the tax.

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

AUTH: 15-30-2620, MCA
IMP: 15-30-2504, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.204 to reflect a change in the lookback letter notification process. As proposed, lookback letters will only be sent to employers whose filing frequency will change for the next year, rather than to all employers. This change will reduce unnecessary mailing costs for the department which are ultimately paid for by taxpayers. Any additional communication to the employers that may have been sent with the lookback letter can be posted on the department's web site or with the Form MW-3 "Montana Annual Wage Withholding Tax Return", which is mailed to the employers every year.

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 September 10, 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	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State August 2, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through III relating to the Insure Montana tax credit	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On September 2, 2010, at 10:00 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 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., August 23, 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) 444-4375; or e-mail canderson@mt.gov.

3. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I INSURE MONTANA REFUNDABLE CREDIT (1) The total amount of credit an employer participating in the Insure Montana program may claim is determined by the State Auditor's office. The department can only adjust the total credit allocation among the owners of an S Corporation, partnership, or limited liability company in order to conform to 15-30-2368, MCA, and this rule.

(a) If the employer is an S corporation, the shareholders' share of the total credit is based on their ownership percentage.

(b) If the employer is a partnership or a limited liability company that is taxed like a partnership, the partners' or members' share of the total credit is based on the their share of the entity's income or loss reported for Montana income tax purposes.

(2) Special rules apply to entities that file fiscal year tax returns.

(a) A C corporation or other entity that files its tax return on a fiscal year-end basis must allocate the total amount of the credit it is entitled to for a calendar year between the filing periods which cover that year. The total is allocated based on the ratio of the number of months of the calendar year that are included in the fiscal year. For example, a corporation is eligible for a credit of $6,000 for 2010. If their fiscal year ends September 30, they claim $4,500 (9/12ths of $6,000) on the return

for the year ending on September 30, 2010 and the remainder of $1,500 (3/12ths of $6,000) on the return filed for the year ending on September 30, 2011.

(b) If a fiscal year return is due before the amount of credit for the calendar year has been determined by the State Auditor's office, an estimated credit can be claimed. The estimated credit should be based on the prior year's credit if there is no change in the number of participating employees, spouses, or dependents. Any remaining amount may be claimed on the subsequent tax year.

AUTH: 15-30-2104, MCA

IMP: 15-30-2368, 33-22-2006, 33-22-2007, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I for the Insure Montana program to clarify that it has no power to alter the amount of the credit, to explain how the credit on an employer that is a pass-through entity is allocated among the shareholders if the employer is an S corporation, among the partners if the employer is a partnership, and among the members if the employer is a limited liability company that is taxed as a partnership. Also, the rule explains how fiscal year employers allocate the calendar year credit amount to the included fiscal years. The rule will provide information to help employers and owners of pass-through entities properly complete their tax returns.

NEW RULE II REDUCTION OF DECUCTIONS ALLOWED FOR INSURANCE CLAIMS (1) An employer is not allowed to claim both a Montana credit and a deduction for the same insurance premium dollars paid.

(a) If the employer is not claiming a federal small business health insurance credit, the deduction claimed on the federal return is reduced by an amount equal to twice the Insure Montana credit claimed by the taxpayer when arriving at income for Montana purposes. For example, an employer determined to be eligible for $4,000 in tax credit must reduce their deduction for premiums by $8,000 ($4,000 x 2).

(b) If the employer is claiming a federal small business health insurance tax credit, their federal deduction may be reduced or completely eliminated. When the federal deduction is reduced for this reason, the deduction only needs to be further reduced for Montana purposes if the federal reduction is less than the Montana reduction that would otherwise be called for in (1)(a). For example, if an employer reduced their federal deduction by $5,000 and they are claiming an Insure Montana credit of $3,000, the reduction on the Montana return is $1,000 ($3,000 x 2 = $6,000 gross reduction less $5,000 federal reduction).

(c) The reduction of the deduction by an employer that is a C corporation must be made by entering the appropriate amount on form CLT-4, line 2, "Additions".

(d) The reduction of the deduction by an employer that is a sole proprietor, must be made by entering the appropriate amount on form 2, Schedule I, "Montana Additions to Income Federal Adjusted Gross Income."

(e) The reduction of the deduction by an employer that is an S corporation must be made by entering the appropriate amount on form CLT-4S, line 15c, "Other additions", and on the Montana Schedule K-1s of the shareholders, line 13, "Other additions."

(f) The reduction of the deduction by an employer that is a partnership or a limited liability company that is taxed as a partnership must be made by entering the appropriate amount on form PR-1, line 16.c, "Other additions," and on the partners' or members' Montana Schedule K-1s, line 3, "Other additions."

(3) An employee who receives premium assistance payments, whether paid to the employee or to an insurance company on behalf of the employee, cannot include the amount of the insurance premiums paid with the assistance payments in determining the amount of unreimbursed medical expenses they can claim as an itemized deduction on either their federal or Montana income tax returns.

AUTH: 15-30-2104, MCA
IMP: 15-30-2368, 15-31-130, 33-22-2006, 33-22-2007, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II to explain how the credit may affect other tax provisions. It explains that an employer's federal income tax deduction that was claimed for the employee health insurance premiums may have to be reduced in determining the amount of deduction allowed in the employer's Montana tax return because the employer cannot claim both the Insurance Montana credit and a deduction for the same dollars of health insurance premiums paid or accrued. The employer is required to reduce the deduction by twice the amount of the credit because the credit is allowed for 50% of the premiums paid. The rule also explains that an employer's usual federal deduction for health insurance premiums may be reduced because the employer cannot include amounts reimbursed with the credit or a premium assistant payment in calculating its deduction or, when premiums accrued and credits received fall in different tax years, the employer may have to report the credit or payment as a tax benefit recovery of an amount deducted in an earlier year. It explains to those employees who directly receive a premium assistance payment under the program that they cannot include the assistance amounts in determining any itemized deduction they may have for unreimbursed medical expenses.

The rule also specifies how the employer is required to report any adjustment to its federal deduction for health insurance premiums paid on its applicable Montana income tax, corporation license tax, or pass-through entity information return.

NEW RULE III COORDINATION WITH OTHER HEALTH INSURANCE CREDITS (1) An employer who claims the federal small business insurance credits is not prevented from claiming the Insure Montana credit. The amount of the Insure Montana credit is not affected by the amount of the federal small business insurance credits an employer claims.

(2) An employer may not claim both the Insure Montana credit and the Health Insurance for Uninsured Montanans credit, form H, provided in 15-30-2367 and 15-31-132, MCA.

AUTH: 15-30-2104, MCA
IMP: 15-30-2367, 15-30-2368, 15-31-130, 15-31-132, 33-22-2006, 33-22-2007, MCA

REASONABLE NECESSITY: The department is proposing to adopt New

Rule III to explain how the Insure Montana credit relates to the federal small business insurance credit and the Montana credit for Health Insurance for Uninsured Montanans Credit.

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 September 10, 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, apply and have been fulfilled. The primary bill sponsor, Representative David Wanzenried, for HB 667 of the 2005 Legislative Session was contacted on April 19, 2006, by regular mail. A draft of the rules was subsequently provided on July 22, 2010.

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State August 2, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through V and amendment of ARM 42.25.1801 relating to oil and gas taxes	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On September 1, 2010, at 1:00 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., August 23, 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) 444-4375; or e-mail canderson@mt.gov.

The following rules are proposed to provide direction to the industry on the reportable taxable value of gas in instances where there is not an arm's-length wellhead price. The intent of the rules is to ensure an adequate and fair taxable value.

3. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I GROSS VALUE OF NATURAL GAS (1) If natural gas is sold pursuant to an arm's-length contract at the wellhead, the contract price multiplied by the volume of natural gas will be accepted as the total gross value.

(2) If natural gas is sold in the absence of a contract the total gross value of the natural gas may be determined by reviewing comparable arm's-length contracts. The department will identify comparable arm's-length contracts utilizing factors including but not limited to; similar time, proximity to the location, similar duration, similar gas quality, and similar quantity of gas sold.

(3) If natural gas is sold through a non-arm's-length contract at the well or wells and sold with an arm's-length contract further downstream of the well or wells, the gross value of the natural gas may be determined at the delivery point with delivery price adjustments.

AUTH: 15-36-322, MCA
IMP: 15-36-305, MCA

REASONABLE NECESSITY The department is proposing to adopt New Rule I to provide clear guidance to taxpayers regarding the computation of the gross value of natural gas. Section (1) of the new rule clarifies that if natural gas is sold at the wellhead pursuant to an arm's-length contract, the value will be accepted as gross value for purposes of 15-36-305, MCA.

Sections (2) and (3) establish the means to determine the gross value of the natural gas if the gas is sold under a non-arm's-length contract, is not sold at the wellhead, or is sold in the absence of any contract.

NEW RULE II DELIVERY PRICE ADJUSTMENT (DPA) COSTS

(1) DPA costs are reasonable and necessary costs incurred by the operator to bring the gas to the point of delivery. DPA costs must be documented, itemized, and increase the value of the gas.

(2) Allowable delivery price adjustment costs include but are not limited to:

(a) Costs of direct labor associated with the central facilities. Direct labor is not meant to include personnel in corporate or headquarter offices who are not directly involved in the actual on-site central facility operations;

(b) Costs of materials, supplies, maintenance, repairs, and utilities directly associated with the central facility;

(c) Property taxes paid on the central facility;

(d) Liability and casualty insurance directly paid on the central facilities;

(e) Depreciation of the central facility is allowed as a reduction in gross value or a delivery price adjustment. The department will allow the depreciation of the initial capital investment of the central facilities, determined on a straight-line basis for a period of ten consecutive years beginning the year in which the facility first began to operate. The department will also allow additional capital investments made to the central facilities after the initial capital investment determined on a straight-line basis for a period of ten consecutive years beginning the year in which the facility first began to operate;

(f) A return on investment percentage will be allowed to the operator of the central facility provided a balance of the initial capital investment is available to be depreciated as calculated in accordance with (2)(e). The annual rate of return will consist of the undepreciated balance of the capital investment multiplied by Moody's Baa corporate bond rate. For example assume the following: both Company Y and Company X operate gas wells in Montana, both companies do not have arm's-length wellhead contracts, but rather delivered gas contracts well downstream of the wells, Company Y made an initial capital investment of a central facility asset (a gas processing plant) for $1,000,000 and the initial investment has been fully depreciated ($1,000,000), Company Y sold the asset to Company X for $200,000 (Moody's Baa corporate rate is 3%), and Company X will be allowed a return on investment reduction of their gas value of 3% of the acquisition cost or 3% * $200,000 or $6,000.

(3) Unallowable delivery price adjustment costs include but not limited to:

(a) State and Federal income taxes, license taxes, sales taxes, fuel taxes, excise taxes, production taxes and other fees, including royalties are not allowable expenses.

(b) Acquisition costs cannot be deducted in the year incurred or capitalized, and amortized under this rule.

(c) Costs incurred in the normal lease separation of the natural gas are not allowed.

(d) No company overhead costs will be allowed.

(e) Indirect labor such as supervisory labor or office labor will not be allowed.

(f) No allocable costs that are not considered direct costs will be allowable.

AUTH: 15-36-322, MCA
IMP: 15-36-305, MCA

REASONABLE NECESSITY The department is proposing to adopt New Rule II to provide taxpayers with specific examples of allowable and unallowable reductions to the gross value of natural gas. Direct labor, supply costs, property tax, insurance, and depreciation of the original capital investment are all possible delivery price adjustments.

New Rule II also provides that a return on investment will be an allowable reduction to the gross value of natural gas. The rule states that the rate of return will only be allowed if there is an undepreciated balance of the capital asset. Since capital investments are only depreciated over ten years, the rate of return will only be allowed for the same ten years.

New Rule II also states that various taxes, acquisition costs, separation costs, overhead, or indirect labor are not allowable reductions in gross taxable value.

NEW RULE III POLICY ON DELIVERY PRICE ADJUSTMENTS

(1) Deductions are allowable only to the extent that they represent directly related costs of the operator's central facilities and were actually incurred and paid.

(2) The Montana Oil and Gas Production Tax is not an income tax. Therefore, the delivery price adjustment rules do not allow the broad spectrum of deductions allowed under an income tax.

AUTH: 15-36-322, MCA
IMP: 15-36-305, MCA

REASONABLE NECESSITY The department is proposing to adopt New Rule III to provide taxpayers with guidance regarding delivery price adjustments. The policy is careful to state that if costs are not incurred and paid for, they are not delivery price adjustments.

New Rule III also informs taxpayers of the distinction between extraction taxes and income taxes. In the case of income taxes, if a cost is incurred generally it is deductable because the goal is to calculate the tax on net income.

The goal of extraction taxes is to tax the product at a market or taxable value. Some costs incurred, such as delivery price adjustment, increase the value of the gas.

New Rule III simply states that not all costs incurred are allowable as delivery price adjustments or reductions in gross value.

NEW RULE IV NECESSITY OF PROOF (1) Any delivery price adjustment or reduction in value will be disallowed if the operator does not keep adequate records or other proof to show the amount and purpose for the expense. To satisfy the adequate records requirement, there must be records maintained that were prepared at or near the time of use, and the records must be supported by receipts, vouchers, or other documentary evidence.

AUTH: 15-36-322, MCA
IMP: 15-36-305, MCA

REASONABLE NECESSITY The department is proposing to adopt New Rule IV to explain the source document requirements for delivery price adjustments. New Rule IV mirrors the record keeping requirements for all tax types when an entity or an individual is attempting to take a reduction in gross taxable value.

NEW RULE V DETERMINING QUALIFYING PRODUCTION

(1) Qualifying production time period begins immediately after the last day of the month preceding the month when production first started. The qualifying production time period continues for 12 or 18 contiguous months, 12 for vertical production or 18 for horizontally completed wells.

(a) Example – A vertical oil or natural gas well first produces May 2010. The well will have a reduced tax rate as illustrated in 15-36-304, MCA for the months May 2010 to April 2011.

(2) The tax incentive applies to the total gross value of all oil or natural gas sold in the 12- or 18-month period. If the sales occur after the 12- or 18-month period nonqualifying production tax rates as described in 15-36-304, MCA apply.

AUTH: 15-36-322, MCA
IMP: 15-36-304, MCA

REASONABLE NECESSITY The department is proposing to adopt New Rule V to explain the department's current and long standing practice for qualifying production. Specifically the rule states that in order to receive a lower rate and be classified as qualifying production, the production and sales of the gas must be done in the first 12 months for vertical wells and the first 18 months for horizontally completed wells.

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

42.25.1801 DEFINITIONS In addition to the definitions found in 15-36-303, MCA, the following definitions apply to terms used in this chapter:

(1) "Arm's-length contract" means a contract or an agreement to sell that has been arrived at between independent, nonaffiliated parties with adverse economic

interests. Contracts or agreements for the purposes of these rules will be defined to be non-arm's-length if the parties to the contract or agreements have business relationships other than the agreement between the buyer and seller which have influenced the sales price.

(2) "Central facilities" are installations which are used to cool, heat, separate, dehydrate, compress, sweeten, or gather natural gas at a point remote from the well or wells.

(3) "Delivery point" means a point away from the well or lease where the natural gas is sold.

(4) "Delivery price adjustments" includes all expenses directly incurred and paid for in the operation and maintenance of "central facilities". Delivery price adjustments are merely a reduction in price and are not meant to be a deductible expense beyond the well or wells. Delivery price adjustments only occur when the department deems it necessary to establish the correct natural gas gross value.

(5) "Lease" means that particularly described tract of land contained in a contract in writing whereby a person having a legal estate in the land so described conveys a portion of his interest to another, in consideration of a certain rental or other recompense or consideration. A lease may contain one or more wells. One operator shall be named as the lease operator and shall be responsible for filing the oil and natural gas production tax return.

(2) through (5)(c) remain the same but are renumbered (6) through (9)(c).

(10) "Qualifying production time period" is the first 12 months of production of a vertical well or the first 18 months of production of a horizontally completed well.

(6) through (8) remain the same but are renumbered (11) through (13).

AUTH: 15-36-322, MCA

IMP: 15-1-101, 15-36-301, 15-36-302, 15-36-303, 15-36-304, 15-36-305, 15-36-309, 15-36-310, 15-36-311, 15-36-312, 15-36-313, 15-36-314, 15-36-315, 15-36-319, 15-36-321, 15-36-326, 82-1-111, MCA

REASONABLE NECESSITY The department is proposing to amend ARM 42.25.1801 to address new definitions contained in the rules in this subchapter.

Arm's-length contracts are further clarified to alert the reader where the gross value of the natural gas will be determined.

Central facilities are specifically defined in the rule because costs incurred by central facilities may qualify to be delivery price adjustments.

Delivery point is defined to provide a distinction between the well and the delivery point. This is an important distinction as delivery price adjustments may be allowable reductions in natural gas gross value at the delivery point to ultimately arrive at the gross value of the natural gas.

Delivery price adjustments are defined as adjustments to a delivered price downstream of the well or wells. The definition states that reductions in gross value are not automatically awarded but rather reviewed and approved by the department.

Qualifying production time period is defined in the rule to establish that for vertical wells the first contiguous 12 months of production are eligible for the lower tax rate. The same holds true for horizontal production.

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) 444-4375; or e-mail canderson@mt.gov and must be received no later than September 10, 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) 444-4375, 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, apply and have been fulfilled. The primary bill sponsor of Senate Bill 430 (1999), Senator Glenn Roush, was contacted on July 29, 2010, by regular mail.

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State August 2, 2010.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.6.104 and 44.6.105 pertaining to filing fees charged by the Business Services Division for federal tax liens and Uniform Commercial Code documents	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On September 3, 2010, at 10:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Conference Room, Room 206, State Capitol Building, at Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on August 27, 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) 444-4240; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

44.6.104 FEES FOR FILING NOTICE OF FEDERAL TAX LIEN
(1) and (1)(a) remain the same.
(b) filing any amendment, ~~$7.00~~ $5.00;
(c) and (d) remain the same.

AUTH: ~~30-9A-525~~ 2-15-405, 30-9A-526, MCA
IMP: 30-9A-519, 30-9A-525, 71-3-205, MCA

REASON: The rule amendment is reasonably necessary because the Secretary of State originally adopted the rule to accommodate an IRS request that $7.00 be charged for filing UCC documents regardless of document type because the IRS did not want to issue different check amounts. Presently, the IRS only allows electronic payment so fees are no longer an issue. The amendment will provide consistency between the IRS and all other filing offices with regard to fees. The authority and implementation statutes were reviewed and updated.

44.6.105 FEES FOR FILING DOCUMENTS -- UNIFORM COMMERCIAL CODE (1) through (3) remain the same.

(4) Certification of copies, $2.00, unless copies accompany a search certificate, then the certification fee is included in the search certificate.

AUTH: 2-15-405, ~~30-9A-525,~~ 30-9A-526, MCA
IMP: 30-9A-501, 30-9A-502, 30-9A-525, 71-3-125, MCA

REASON: The amendment is reasonably necessary to allow the Secretary of State to charge $2.00 for the certification of UCC copies. This charge was previously reflected in ARM 44-5-121, Miscellaneous Fees, but was removed when the Secretary of State began charging a flat fee for copies. The authority and implementation statutes were reviewed and updated.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 461-5173; fax (406) 444-4240; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., September 10, 2010.

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

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

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

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

/s/ Jorge Quintana
JORGE QUINTANA
Rule Reviewer

/s/ Linda McCulloch
LINDA MCCULLOCH
Secretary of State

Dated this 2nd day of August, 2010.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 2.21.501, 2.21.502, 2.21.503, 2.21.504, 2.21.505, 2.21.506, and 2.21.507 pertaining to jury duty and witness leave policy	)))))	NOTICE OF REPEAL

TO: All Concerned Persons

1. On June 10, 2010, the Department of Administration published MAR Notice No. 2-21-433 regarding the proposed repeal of the above-stated rules at page 1362 of the 2010 Montana Administrative Register, Issue Number 11.

2. The Department of Administration has repealed ARM 2.21.501, 2.21.502, 2.21.503, 2.21.504, 2.21.505, 2.21.506, and 2.21.507 as proposed.

3. A hearing was held on July 8, 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 August 2, 2010.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 2.21.1701, 2.21.1702, 2.21.1703, 2.21.1711, 2.21.1712, 2.21.1713, and 2.21.1731 pertaining to overtime and nonexempt compensatory time	)))))	NOTICE OF REPEAL

TO: All Concerned Persons

1. On June 10, 2010, the Department of Administration published MAR Notice No. 2-21-437 regarding the proposed repeal of the above-stated rules at page 1365 of the 2010 Montana Administrative Register, Issue Number 11.

2. The Department of Administration has repealed ARM 2.21.1701, 2.21.1702, 2.21.1703, 2.21.1711, 2.21.1712, 2.21.1713, and 2.21.1731 as proposed.

3. A hearing was held on July 8, 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 August 2, 2010.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 2.21.3801, 2.21.3802, 2.21.3803, 2.21.3807, 2.21.3808, 2.21.3809, 2.21.3810, 2.21.3811, and 2.21.3822 pertaining to probation	))))))	NOTICE OF REPEAL

TO: All Concerned Persons

1. On June 10, 2010, the Department of Administration published MAR Notice No. 2-21-440 regarding the proposed repeal of the above-stated rules at page 1382 of the 2010 Montana Administrative Register, Issue Number 11.

2. The Department of Administration has repealed ARM 2.21.3801, 2.21.3802, 2.21.3803, 2.21.3807, 2.21.3808, 2.21.3809, 2.21.3810, 2.21.3811, and 2.21.3822 as proposed.

3. A hearing was held on July 8, 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 August 2, 2010.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.12.601, 4.12.602, 4.12.604, 4.12.606, 4.12.607, 4.12.608, 4.12.609, 4.12.620, 4.12.621, and repeal of 4.12.603 and 4.12.605, relating to fertilizer regulations	))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On June 24, 2010 the Department of Agriculture published MAR Notice No. 4-14-194 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1436 of the 2010 Montana Administrative Register, Issue Number 12.

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

3. No comments or testimony were received.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

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

Certified to the Secretary of State August 2, 2010.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On April 15, 2010, the Board of Environmental Review published MAR Notice No. 17-303 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 818, 2010 Montana Administrative Register, issue number 7. On June 10, 2010, the board published MAR Notice No. 17-303 regarding a notice of extension of comment period on the proposed amendment of the above-stated rules at page 1385, 2010 Montana Administrative Register, issue number 11.

2. The board has amended the rules exactly as proposed.

3. The following comments were received and appear with the board's responses:

COMMENT NO. 1: One comment was received from the Environmental Protection Agency in support of the proposed amendments.

RESPONSE: The board acknowledges the comment.

COMMENT NO. 2: One comment was received indicating that in Department Circular DEQ-7: (1) Atrazine is incorrectly classified as a human carcinogen; (2) The atrazine MCL is incorrectly applied to include atrazine plus the deethyl atrazine, deisopropyl atrazine and deethyl deisopropyl atrazine (metabolites); (3) The metolachlor HAL reported in Circular DEQ-7 does not agree with the current EPA-OW published value of 700 µg/L; and (4) Simazine is incorrectly classified as a human carcinogen. The commentor requested that Department Circular DEQ-7 be revised to correct these problems.

RESPONSE: The board cannot make these changes in this rulemaking proceeding because they are beyond the scope of the proposed amendments. However, the board will consider these comments and may institute a future rulemaking proceeding to address the issues raised in the comment.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North By: */s/ Joseph W. Russell*
JOHN F. NORTH JOSEPH W. RUSSELL, M.P.H.
Rule Reviewer Chairman

Certified to the Secretary of State, August 2, 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 AMENDMENT (PUBLIC WATER AND SEWAGE SYSTEM REQUIREMENTS)

TO: All Concerned Persons

1. On April 15, 2010, the Board of Environmental Review published MAR Notice No. 17-304 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 828, 2010 Montana Administrative Register, issue number 7.

2. The board has amended the rules exactly as proposed.

3. No public comments or testimony were received.

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, August 2, 2010.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.50.403 and 17.50.410 pertaining to definitions and annual operating license requirements	NOTICE OF AMENDMENT (SOLID WASTE)

TO: All Concerned Persons

1. On April 15, 2010, the Board of Environmental Review published MAR Notice No. 17-305 regarding a notice of proposed amendment (no public hearing contemplated) of the above-stated rules at page 833, 2010 Montana Administrative Register, issue number 7.

2. The board has amended the rules exactly as proposed.

3. No public comments or testimony were received.

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, August 2, 2010.

BEFORE THE DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

In the matter of the amendment of ARM 32.23.102 and 32.23.504, pertaining to transactions involving the purchase and resale of milk within the state and transfer of quota	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 24, 2010, the Department of Livestock published MAR Notice No. 32-10-211 regarding the proposed amendment of the above-stated rules at page 1477 of the 2010 Montana Administrative Register, issue number 12.

2. The Department of Livestock has amended the above-stated rules exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

/s/ Christian Mackay
Christian Mackay
Executive Officer
Department of Livestock

/s/ George H. Harris
George H. Harris
Rule Reviewer

Certified to the Secretary of State August 2, 2010.

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

In the matter of the adoption New Rules I through XIII pertaining to interconnection standard established by the federal Energy Policy Act of 2005	)))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On February 25, 2010, the Department of Public Service Regulation published MAR Notice No. 38-2-207 pertaining to the public hearing on the adoption of the above-stated rules at page 491 of the 2010 Montana Administrative Register, Issue Number 4.

2. A public hearing was held on March 31, 2010. Six people testified at the hearing. Six written comments were received by the March 31, 2010 deadline.

3. The department has adopted New Rules III (38.5.8403), VII (38.5.8407), XII (38.5.8412), and XIII (38.5.8413) as proposed.

4. The department has adopted the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (38.5.8401) DEFINITIONS Terminology used in these rules has the following meanings, except where the context clearly indicates otherwise:

(1) "Applicant" means a person or entity that ~~who~~ has filed an application to interconnect a customer-generator facility to an EDS ~~Electric Delivery System~~. An applicant may include a third party who owns and operates a small generator facility under agreement with a customer or leases a small generator facility to a customer.

(2) through (4) remain as proposed.

(5) "Customer-generator ~~Generator~~" means a ~~residential or commercial~~ customer that generates electricity, typically on the customer's side of the meter.

(6) and (7) remain as proposed.

(8) "Export" means power flows past the point of interconnection onto the EDS.

(9) "Good Standing" means a customer's account is not in arrears.

(8) and (9) remain as proposed, but are renumbered (10) and (11).

~~(10)~~ (12) "Interconnect" means to connect a utility customer's generator to the EDS ~~electric distribution company's electric distribution system~~.

(11) remains as proposed, but is renumbered (13).

(14) "Interconnection Customer" means an applicant that has entered into an interconnection agreement with an EDC to interconnect a small generator facility and has interconnected that small generator facility.

(15) "Line Section" means the portion of a radial distribution circuit to which an applicant seeks to interconnect and is bounded by automatic sectionalizing devices or the end of a distribution line.

(12) through (15) remain as proposed, but are renumbered (16) through (19).

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

NEW RULE II (38.5.8402) APPLICABILITY (1) The interconnection procedures set forth in this subchapter apply to applicants proposing to install and interconnect a small generator facility to an EDC's system that satisfies the following criteria:

(a) The small generator facility must be sited on the utility customer's premises; ~~and~~

(b) The customer installing the small generator facility must be in good standing with the utility;

(c) The proposed small generator facility's point of interconnection may not be on a transmission line;

(d) The power produced from the small generator facility must be contained on the EDS and not flow onto the transmission system; and

(e) The power exported by an interconnection customer can only be sold to the EDC.

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

NEW RULE IV (38.5.8404) AGREEMENTS, FORMS, AND FEES (1) The EDC shall file standard applications for interconnection requests, standard agreements required by the interconnection rules, a schedule of fees for processing interconnection requests, and a schedule of rates for performing the various studies required by these rules with the commission.

(2) All agreements, forms, fees, and rates must be filed with and approved by the commission after public notice and opportunity for comment.

(3) Utilities may not deviate from the standard agreements and fees filed with the commission without commission approval.

(4) A customer may petition the commission to require the utility to amend its agreements, forms, fees, and rates.

(5) The commission on its own, may require the utility to amend its agreements, forms, fees, and rates.

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

NEW RULE V (38.5.8405) CERTIFIED EQUIPMENT (1) An interconnection request may be eligible for expedited interconnection review as determined under [NEW RULE VI] if the small generator facility uses certified interconnection equipment. Interconnection equipment shall be deemed certified upon establishment of all of the following:

(a) The interconnection equipment has been labeled and is publicly listed by an NRTL at the time of the interconnection application;

(b) The NRTL testing the interconnection equipment makes readily available for verification all test standards and procedures it utilized in performing such equipment certification, and, with consumer approval, the test data itself. The NRTL may make such information available on its web site and by encouraging such information to be included in the manufacturer's literature accompanying the equipment;

(c) The applicant verifies that the intended use of the interconnection equipment falls within the use or uses for which the interconnection equipment was labeled, and listed by the NRTL~~;~~.

~~(d)~~ (2) If the interconnection equipment is an integrated equipment package such as an inverter, then the applicant must show that the generator or other electric source being utilized is compatible with the interconnection equipment and is consistent with the testing and listing specified for this type of interconnection equipment~~;~~.

~~(e)~~ (3) If the interconnection equipment includes only interface components (switchgear, multifunction relays, or other interface devices), then the applicant must show that the generator or other electric source being utilized is compatible with the interconnection equipment and is consistent with the testing and listing specified for this type of interconnection equipment~~;~~.

~~(f)~~ (4) Interconnection equipment must be evaluated by a NRTL in accordance with the following codes and standards:

~~(i)~~ (a) IEEE 1547-2003 Standard for Interconnecting Distributed Resources with Electric Power Systems (including use of IEEE 1547.1-2005 testing protocols to establish conformity); and

~~(ii)~~ (b) UL 1741 Inverters, Converters, and Controllers for Use in Independent Power Systems~~; and~~.

~~(g)~~ (5) Certified interconnection equipment shall not require further design testing or production testing, as specified by IEEE Standard 1547-2003 Sections 5.1 and 5.2, or additional interconnection equipment modification to meet the requirements for expedited review; however, nothing herein shall preclude the need for an interconnection installation evaluation, commissioning tests or periodic testing as specified by IEEE Standard 1547-2003 Sections 5.3, 5.4, and 5.5, or for a witness test that may be conducted by the EDC.

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

NEW RULE VI (38.5.8406) REVIEW PROCEDURES (1) An EDC shall review interconnection requests using one or more of the following review procedures:

(a) An EDC shall use Level 1 procedures for evaluation of all interconnection requests to connect inverter-based small generation facilities if:

(i) The small generator facility has a nameplate capacity of ~~10~~ 50 kW or less; and

(ii) The customer interconnection equipment proposed for the small generator facility is certified.

(b) An EDC shall use Level 2 procedures for evaluating interconnection requests if:

(i) The small generator facility has a nameplate capacity of 2 MW or less; and

(ii) The interconnection equipment proposed for the small generator facility is certified; or

(iii) The small generator facility was reviewed under Level 1 review procedures but not approved and the applicant has submitted a new interconnection request for consideration.

(c) An EDC shall use Level 3 review procedures for evaluating interconnection requests ~~to area networks and radial distribution circuits~~ where power will not be exported ~~based on the following criteria:~~

~~(i) For interconnection requests to the load side of an area network the following criteria must be satisfied to qualify for a Level 3 expedited review:~~

~~(A) The nameplate capacity of the small generator facility is less than or equal to 50 kW;~~

~~(B) The proposed small generator facility utilizes a certified inverter-based equipment package;~~

~~(C) The small generator utilizes reverse power relays and/or other protection functions that prevent the export of power into the area network;~~

~~(D) The aggregate of all generation on the area network does not exceed the smaller of 5% of an area network's maximum load or 50 kW; and~~

~~(E) No construction of facilities by the electric distribution company shall be required to accommodate the small generator facility.~~

~~(ii) For interconnection requests to a radial distribution circuit, the following criteria must be satisfied to qualify for a Level 3 expedited review:~~

~~(A) The small generator facility has a nameplate capacity of 10 MW or less;~~

~~(B) The aggregated total of the nameplate capacity of all of the generators on the circuit, including the proposed small generator facility, is 10 MW or less;~~

~~(C) The small generator will use reverse power relays or other protection functions that prevent power flow onto the electric distribution system;~~

~~(D) The small generator is not served by a shared transformer; and~~

~~(E) No construction of facilities by the EDC on its own system shall be required to accommodate the small generator facility~~.

(d) An EDC shall use the Level 4 study procedures for evaluating interconnection requests if:

~~(i) The nameplate capacity of the small generator facility is 10 MW or less; and~~

~~(ii)~~ (i) The interconnection request was not approved under a Level 1, Level 2, or Level 3 expedited review and the applicant has submitted an interconnection request for consideration under a Level 4 study review; or

~~(iii)~~ (ii) The interconnection request does not meet the criteria for expedited review under Level 1, Level 2, or Level 3 review procedures.

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

NEW RULE VIII (38.5.8408) ADDITIONAL REQUIREMENTS (1) remains as proposed.

(2) To assist customers in the interconnection process, the EDC must: ~~will~~

(a) Maintain all interconnection related documents on their proprietary web site; ~~designate an employee or office from which basic information on the application can be obtained through an informal process.~~

(b) Designate an employee or office from which basic information on the application can be obtained through an informal process and prominently display the contact information on the proprietary web site required in (a); and ~~Upon request, the EDC shall provide the applicant with all relevant forms, documents and technical requirements for filing a complete application for interconnection of generators.~~

(c) Upon the customer's request, ~~the EDC shall~~ meet with the customer prior to submission of an application for expedited interconnection.

(3) through (7) remain as proposed

(8) EDC monitoring and control of a small generator facility~~ies shall be~~ is permitted only if the nameplate capacity rating of the small generator facility interconnecting to the EDS, or the aggregate nameplate capacity of all small generator facilities on the line section in combination with the small generator facility interconnecting to the EDS, ~~rating~~ is greater than 15% of the line section annual peak load as most recently measured at the substation or exceeds the annual minimum load of the line section. Any monitoring and control requirements shall be consistent with the EDC's written and published requirements and must be clearly identified as part of an interconnection agreement executed by the interconnection customer and EDC.

(9) The EDC shall have the option of performing a witness test to verify the small generator facility complies with the standards listed in [NEW RULE VII] after construction of the small generator facility is completed. The applicant shall provide the EDC at least 20 business days notice of the planned commissioning test for the small generator facility. If the EDC elects to perform a witness test, it shall contact the applicant to schedule the witness test at a mutually agreeable time within ten business days of the scheduled commissioning test. If the EDC does not perform the witness test within ten business days of the commissioning test, the witness test is deemed waived. If the witness test is not acceptable to the EDC, the EDC must document all deficiencies and provide a written report identifying the deficiencies to the applicant within five business days of the witness test. The applicant shall be granted a period of 30 business days to address and resolve any deficiencies. If the applicant fails to address and resolve the deficiencies to the satisfaction of the EDC, the interconnection request shall be deemed withdrawn. If a witness test is not performed by the EDC or an entity approved by the EDC, the applicant must still satisfy the interconnection test specifications and requirements set forth in IEEE standard 1547-2003 Section 5. The applicant shall, if requested by the EDC, provide a copy of all documentation in its possession regarding testing conducted pursuant to IEEE Standard 1547.1-2005.

(10) remains as proposed.

(11) An EDC shall have the right to inspect a customer-generator's facility before and after interconnection approval is granted, at reasonable hours and with reasonable prior notice provided to the customer-generator. If the EDC discovers the customer-generator's facility is not in compliance with the requirements of IEEE Standard 1547-2003, and the noncompliance adversely affects the safety or reliability of the electric system, the EDC may require disconnection of the customer-

generator's facility until it complies. Immediately upon disconnection of the customer-generator's facility, the EDC shall provide a written report detailing how the customer-generator's facility is not complying with IEEE Standard 1547-2003 or these rules.

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

NEW RULE IX (38.5.8409) LEVEL 1 EXPEDITED REVIEW (1) remains as proposed.

(2) The EDC shall evaluate the potential for adverse system impacts using the following screens which must be satisfied:

(a) For interconnection of a proposed small generator facility to a radial distribution ~~circuit~~ line section, the aggregated generation on the ~~circuit~~ line section, including the proposed small generator facility, may not exceed:

(i) 15% of the line section annual peak load as most recently measured at the substation; or

(ii) the annual minimum load of the line section.

(b) remains as proposed.

(c) When a proposed small generator facility is to be interconnected on a single-phase shared secondary line, the aggregate generation capacity on the shared secondary line section, including the proposed small generator facility, may not exceed 20 kilovolt-amps (kVA);

(d) through (f) remain as proposed.

(3) The Level 1 interconnection review must be conducted in accordance with the following procedures:

(a) An EDC shall, within ten business days after receipt of the interconnection request, inform the applicant that the interconnection request is complete or incomplete and what materials are missing;

(b) When an interconnection request is complete, the EDC shall assign a line section queue position if there is more than one interconnection request pending for the same line section. The line section queue position of the interconnection request shall be used to determine the potential adverse system impact of the small generator facility based on the relevant screening criteria. The EDC shall notify the applicant about other higher line section queued applicants on the same line section or spot network for which interconnection is sought. Line section queue position shall not be forfeited or otherwise impacted by any pending dispute submitted under the provisions of [NEW RULE XIII];

~~(b)~~ (c) The EDC shall, within 15 business days after the end of the ten business days noted in (3)(a), verify that the small generator facility equipment can be interconnected safely and reliably using Level 1 screens;

~~(c)~~ (d) Unless the EDC determines and demonstrates that a small generator facility cannot be interconnected safely or reliably to its system and provides a letter to the applicant explaining its reasons for denying an interconnection request, the EDC shall provide the applicant with a small generator interconnection agreement within five business days and approve the interconnection request subject to the following conditions:

(i) The small generator facility has been approved by local or municipal electric code officials with jurisdiction over the interconnection;

(ii) A certificate of completion has been returned to the EDC. Completion of local inspections may be designated on inspection forms used by local inspecting authorities;

(iii) The witness test has been successfully completed or waived; and

(iv) The applicant has signed a standard small generator interconnection agreement. When an applicant does not sign the agreement within 30 business days after receipt from the EDC, the interconnection request shall be deemed withdrawn.

~~(d)~~ (e) ~~When a small generator facility is not approved under a Level 1 review, the applicant may submit a new interconnection request for consideration under Level 2, Level 3, or Level 4 procedures~~ If the small generator facility is not approved under a Level 1 review, the EDC shall provide the applicant a letter explaining its reasons for denying the interconnection request. The applicant may submit a new interconnection request for consideration under a Level 2, Level 3, or Level 4 interconnection review; however, the line section queue position assigned to the Level 1 interconnection request shall be retained provided the request is made within 15 business days after notification that the current interconnection request has not been approved.

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

NEW RULE X (38.5.8410) LEVEL 2 EXPEDITED REVIEW (1) remains as proposed.

(2) The EDC shall evaluate the potential for adverse system impacts using the following screens which must be satisfied:

(a) For interconnection of a proposed small generator facility to a radial distribution circuit, the aggregated generation on the circuit, including the proposed small generator facility, may not exceed:

(i) 15% of the line section annual peak load as most recently measured at the substation; or

(ii) the annual minimum load of the line section.

(b) through (e) remain as proposed.

(f) The proposed small generator facility, in aggregate with other generation on the distribution circuit, may not cause any distribution protective devices and equipment (including substation breakers, fuse cutouts, and line reclosers), or other customer equipment on the electric distribution system to be exposed to fault currents exceeding 90% of the short circuit interrupting capability including X/R effects;

(g) through (k) remain as proposed.

~~(l) The proposed small generator facility's point of interconnection may not be on a transmission line;~~

(m) and (n) remain as proposed, but are renumbered (l) and (m).

(3) through (6) remain as proposed.

(7) If the small generator facility is not approved under a Level 2 review, the EDC shall provide the applicant a letter explaining its reasons for denying the

interconnection request. The applicant may submit a new interconnection request for consideration under a Level 3 or Level 4 interconnection review; however, the line section queue position assigned to the Level 2 interconnection request shall be retained provided the request is made within 15 business days ~~of~~ after notification that the current interconnection request ~~is denied~~ has not been approved.

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

NEW RULE XI (38.5.8411) LEVEL 3 EXPEDITED REVIEW (1) and (2) remain as proposed.

(3) For interconnection requests to the load side of an area network, the following criteria must be satisfied:

(a) The nameplate capacity of the small generator facility is less than or equal to 50 kW;

(b) The proposed small generator facility utilizes a certified inverter-based equipment package;

(c) The small generator utilizes reverse power relays and/or other protection functions that prevent the export of power into the area network;

(d) The aggregate of all generation on the area network does not exceed the smaller of 5% of an area network's maximum load or 50 kW; and

(e) No construction of the facilities by the electric distribution company shall be required to accommodate the small generator facility.

~~(3)~~ (4) Interconnection requests meeting the requirements set forth in [NEW RULE ~~VI(1)(c)(i)~~ XI(3)] for ~~nonexporting~~ small generator facilities interconnecting to an area network shall be presumed to be appropriate for interconnection. The EDC shall process the interconnection request to area networks using the following procedures:

(a) The EDC shall evaluate the interconnection request under Level 2 interconnection review procedures as set forth in [NEW RULE X(3)] except that the EDC may have 25 business days to conduct an area network impact study to determine any potential adverse system impacts of interconnecting to the EDC's area network; however, the EDC shall not be obligated to meet the timeline for reviewing the interconnection request as provided for herein until such time as the EDC has completed the review of all other interconnection requests that have a higher line section queue position;

(b) In the event the area network impact study identifies potential adverse system impacts, the EDC may determine at its sole discretion that it is inappropriate for the small generator facility to interconnect to the area network in which case the interconnection request shall be denied; however, the applicant may elect to submit a new interconnection request for consideration under Level 4 procedures in which case the line section queue position assigned to the Level 3 interconnection request will be retained provided the request is made within 15 business days ~~of~~ after notification that the current application is denied; and

(c) In the event the EDC denies the interconnection request, the EDC shall provide the applicant with a copy of its area network impact study and written justification for denying the interconnection request.

(5) For interconnection requests to a radial distribution circuit, the following criteria must be satisfied:

(a) The aggregated total of the nameplate capacity of all of the generators on the circuit, including the proposed small generator facility, is 10 MW or less;

(b) The small generator will use reverse power relays or other protection functions that prevent power flow onto the electric distribution system;

(c) The small generator is not served by a shared transformer; and

(d) No construction of facilities by the EDC on its own system shall be required to accommodate the small generator facility.

~~(4)~~ (6) For an interconnection request meeting the requirements of [NEW RULE ~~VI(1)(c)(ii)~~ XI(5)] for ~~nonexporting~~ small generator facilities interconnecting to a radial distribution circuit, the EDC shall evaluate the interconnection request under the Level 2 expedited review in [NEW RULE X]. The EDC shall approve the interconnection request if all of the applicable screens in [NEW RULE X(2)] are satisfied.

~~(5)~~ (7) For a small generator facility that satisfies the criteria in ~~(3)~~ (4) or ~~(4)~~ (5) of this rule, the EDC shall approve the interconnection request and provide a standard interconnection agreement for the applicant to sign within five business days.

(6) through (8) remain as proposed, but are renumbered (8) through (10).

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

5. The department has thoroughly considered the comments received. All revisions to the rules as originally proposed are in response to comment or to enhance clarity. A summary of the comments received and the department's responses area as follows:

COMMENT NO. 1: The International Brotherhood of Electrical Workers (IBEW) filed comments supporting the proposed rules. IBEW further commented a reference to Montana Code Annotated (MCA) Title 50, chapter 60 and MCA Title 37, chapter 38 should be made in the rules.

RESPONSE: The department appreciates IBEW's support for the proposed rules. The department is not persuaded additional references to MCA Title 50, chapter 60 and MCA Title 37, chapter 38 are necessary.

COMMENT NO. 2: Montana Renewable Energy Association (MREA), Montana's Alternative Energy Resources Organization (AERO) and the Interstate Renewable Energy Council (IREC) urge the department to adopt the proposed rules after updating the rules to reflect industry best practices.

RESPONSE: The department is not persuaded the rules require updating and concludes the rules with appropriate amendments are appropriate for Montana.

COMMENT NO. 3: NorthWestern Energy (NWE) commented the rules are vague, nonspecific, and open to misinterpretation or misunderstanding. Further,

NWE commented the interconnection rules modeled after South Dakota's should be adopted.

COMMENT NO. 4: The Montana Small Independent Renewable Generators (MSIRG) and NWE commented the proposed rules may contradict or are not consistent with existing qualified facility, net metering, and federal rules.

RESPONSE: The department does not agree with NWE or MSIRG and is not persuaded South Dakota's rules are appropriate for Montana.

COMMENT NO. 5: MSIRG stated their primary concern is small generators must not be charged for transmission upgrades not required by their project and any network upgrades charged to small generators be repaid by the utility.

RESPONSE: The proposed rules are not applicable to interconnection of small generators to the transmission system or for interconnection of small generators flowing power onto the transmission system. The proposed rules have been amended to clarify the intended applicability.

COMMENT NO. 6: NWE noted concern with the status of existing pending interconnection requests and requested the department define which rules govern the various processes. Additionally, NWE commented the new rules do not adequately describe the types of small generators the rules apply. NWE suggested the rule should not apply to small generator facilities that are producing electricity for resale to a person other than the interconnecting electric utility.

COMMENT NO. 7: MSIRG commented the applicability of the rules should be clarified.

COMMENT NO. 8: IREC requested the rules apply to all state-jurisdictional interconnections of small generator facilities.

RESPONSE: The department has amended New Rule II to clarify the applicability of the rules.

COMMENT NO. 9: NWE noted inconsistencies in the proposed rules concerning the requirement to submit new interconnection requests if the small generator is not able to interconnect under Level 1, Level 2, or Level 3 expedited reviews.

RESPONSE: The department has amended the rules to make them consistent throughout.

COMMENT NO. 10: The Renewable Northwest Project (RNP) and Natural Resource Defense Council (NRDC) commented there are several aspects of the rule that can be improved upon, but commented the rule is a significant step forward in making a more efficient and rational process of interconnecting small renewable generation to the utility.

RESPONSE: The department thanks RNP/NRDC for their comment.

COMMENT NO. 11: IREC commented the rules should include limitations on insurance requirements and encouraged the department to adopt the limitations proposed in IREC's model interconnection standards.

RESPONSE: The department is not persuaded by IREC's comments. The department concluded the interconnection agreements the utilities are required to file with the department are the appropriate place to address insurance requirements. The department's approach will ensure adequate flexibility is available to modify insurance requirements.

COMMENT NO. 12: IREC suggested the department address transfer of ownership of interconnected facilities to a new party and guarantee the ability to transfer or assign an interconnection agreement so long as the assignee gives written notice to the EDC.

RESPONSE: The department is not persuaded transfer of ownership provisions should be included as part of the adopted rules. Rather the department has concluded transfer or assignment of an interconnection agreement should be contained in the utilities interconnection agreement with the interconnection customer.

COMMENT NO. 13: MREA/AERO suggested the definition of "Customer-generator" be changed to ensure potential "customer-generators" are not excluded if they are not a residential or commercial customer. Additionally, IREC recommended the definition of "Customer-generator" be removed from the rules to allow any generator able to avail itself to the rules to interconnect as the definition is overly restrictive.

RESPONSE: The department has amended the definition of "Customer-generator" to ensure potential "customer-generators" are not inadvertently excluded from interconnection.

COMMENT NO. 14: NWE suggested a definition of "non-exporting" be included in the proposed rule to clarify the applicability of Level 3 expedited review.

RESPONSE: The department has amended New Rule I to include a definition for "export".

COMMENT NO. 15: MSIRG and NWE commented a definition of "good standing" was not provided.

RESPONSE: The department has amended New Rule I to include a definition of "good standing".

COMMENT NO. 16: RNP/NRDC requested a definition for "prime mover" be included in the rules.

RESPONSE: The department is not persuaded that a definition of "prime mover" is necessary.

COMMENT NO. 17: IREC commented the 10 MW limit in the rules may create a potential gap of rule coverage between Montana's interconnection rules and FERC's.

COMMENT NO. 18: MSIRG commented the rules should apply to all generators a utility serves, not just those under 10 MW in nameplate capacity or a rationale for selecting 10 MW should be provided.

COMMENT NO. 19: NWE commented 10 MW is a good fit for keeping power produced by a small generator limited to the distribution system.

RESPONSE: The department concluded a 10 MW limit in nameplate capacity is appropriate for the proposed rules because the IEEE standard utilized as the technical basis of the rules is limited to 10 MW. An additional rule making will be proposed to address any potential gap created between these rules and FERC's.

COMMENT NO. 20: MREA/AERO, IREC, and RNP/NRDC recommended the department develop uniform rates, agreements, and forms that can be applied to all regulated utilities rather than requiring the utilities to individually develop rates, agreements, and forms. Further, MREA/AERO, IREC, and RNP/NRDC recommended the department adopt the 2009 IREC model forms.

COMMENT NO. 21: NWE commented the department needs to be aware the rule places a requirement upon NWE to develop application forms, agreements, price schedules, and instructions for the interconnection process. NWE noted they may have to develop a set of forms in addition to its FERC forms which may be confusing to potential interconnectors.

RESPONSE: The department is not persuaded that it is inappropriate for the utilities to develop the agreements, procedures, and fees necessary for the interconnection process. The department believes the responsibility of developing uniform rates, agreements, and forms lies with the utilities with appropriate department oversight.

COMMENT NO. 22: NWE commented the interconnection study deposits required by the proposed rules should be consistent with federal requirements. NWE further commented the proposed rules do not provide for interest provisions, refund of deposits if amount exceeds cost, or whether the EDC can assess the interconnector additional fees if study cost exceed the deposit amount.

RESPONSE: The department acknowledges the rules do not have provisions for handling study deposits, interest, refunds, or additional charges and concludes

these items should be included in each utility's agreements and forms filed with the department.

COMMENT NO. 23: MSIRG proposed the department amend the rules to clarify and strengthen the procedures for the filing and review of the each utility's proposed interconnection request forms, standards, agreements, study fees, and rates. MSIRG also commented deadlines for filing the required agreements, rates, and forms with the department and a standard of review the department will utilize for approving the agreements, rates, forms, etc. should be clarified.

RESPONSE: The department has amended New Rule IV to add provisions for petition by an interconnection applicant to petition the utility to modify its agreements, rates, or fees. Additionally, New Rule IV has been amended to note the department may on its own initiative require the utilities to review and amend their interconnection agreements, forms, rates, etc.

COMMENT NO. 24: IREC commented the department should fix the fees and charges for applications as well as the rate paid for engineering services related to interconnection at all levels consistent with IREC's Model.

RESPONSE: The department is not persuaded the IREC model is more appropriate than what is already contained in the rules. The fees and engineering service rates will be fixed as they cannot be deviated from once filed with, and approved by, the department.

COMMENT NO. 25: RNP/NRDC recommended amendment of New Rule V to ensure the requirements can be met and the purpose of the rule is accomplished.

RESPONSE: New Rule V was amended to ensure interconnection equipment that meets UL1741 and IEEE 1547 can be used for interconnecting small generator facilities.

COMMENT NO. 26: RNP/NRDC recommended a definition or clarification for "publicly listed".

RESPONSE: The department is not persuaded a definition or clarification for "publicly listed" is necessary.

COMMENT NO. 27: IREC commented there is no IEEE standard 1547 certification available from a Nationally Recognized Testing Laboratory for all equipment that might be used in the interconnection process. IREC commented non-inverter-based systems would be forced into a Level 4 review.

RESPONSE: The department acknowledges the certified equipment provision in New Rule V limits the equipment that can be used for expedited interconnections. However, the department concludes a higher level of review is necessary if equipment used for interconnections has not been found to meet IEEE standards by a Nationally Recognized Testing Laboratory.

COMMENT NO. 28: IREC, MREA/AERO, RNP/NRDC, and NWE recommended the department include a provision in the rules to require EDCs to include all interconnection related documents, standards, agreements, forms, etc. on the EDS's proprietary web site. Additionally, IREC suggested the proposed rules require the EDC contact information prominently displayed on the EDC's web site.

RESPONSE: The department has amended New Rule VIII to include a provision for requiring all interconnection related documents on the EDC's proprietary web site.

COMMENT NO. 29: IREC recommended the definition of "Customer-generator" be removed from the proposed rules to allow any generator able to avail itself to the proposed rules to interconnect.

RESPONSE: The department does not agree that the rules should allow any type of generator to interconnect. The rules were proposed to implement Section 1254 of the Electricity Modernization Act of 2005 which specifies interconnection service for "an electric consumer under which an on-site generating facility on the customer's premises shall be connected to the local distribution facilities".

COMMENT NO. 30: IREC recommended the term "interconnection customer" be defined as it is used throughout the rules.

RESPONSE: The department agrees with IREC and has amended New Rule I to include a definition for "interconnection customer".

COMMENT NO. 31: IREC commented the proposed rules should not preclude third-party ownership of renewable energy systems and the definition of "Applicant" should be amended.

RESPONSE: The department agrees third-party ownership of generators should be permitted and has amended the definition of "Applicant" in New Rule I.

COMMENT NO. 32: RNP/NRDC suggested New Rule V(d) and (e) be combined/reworded to cover all equipment.

RESPONSE: The department is not persuaded New Rule V(d) and (e) should be combined/reworded to cover all equipment.

COMMENT NO. 33: MREA/AERO, NWE, RNP/NRDC, and IREC commented the Level 1 small generator nameplate capacity be increased from 10 kW or less to 50 kW or less.

RESPONSE: The department agrees and amended New Rule VI(a)(i) to incorporate the higher limit for Level 1 interconnections.

COMMENT NO. 34: IREC recommended the Level 3 expedited rule review in New Rule VI be revised to place the technical standards portion in New Rule XI.

RESPONSE: The department agrees and has amended New Rule VI and New Rule XI.

COMMENT NO. 35: IREC commented New Rule VI(1)(c) should be revised to allow nonexporting systems no greater than 10 MW as discussed in IREC's Model rather than 50 kW.

RESPONSE: The department is not persuaded IREC's model is more appropriate.

COMMENT NO. 36: MREA/AERO, IREC and RNP/NRDC recommended the requirement for a lockable, visible-break isolation device accessible by the EDC be removed from New Rule VIII.

COMMENT NO. 37: NWE commented they currently require visible-break isolation devices on their system.

RESPONSE: The department is not persuaded the lockable, visible-break isolation device requirement should be removed. The department appreciates the commenter's comments and will examine the requirement of installing a lockable, visible-break isolation device once the rules have been implemented.

COMMENT NO. 38: NWE commented New Rule VIII(8) places monitoring and control obligations on the EDC and requires the EDC to develop and publish monitoring and control requirements.

RESPONSE: The department acknowledges EDCs will have to develop monitoring and control requirement guidelines.

COMMENT NO. 39: NWE commented additional criteria should be included so the aggregated load of the generators does not exceed the annual minimum load of the line section.

RESPONSE: The department agrees with NWE and has amended New Rule VIII(8) to clarify when an EDC may monitor or control a small generator facility on a distribution line section.

COMMENT NO. 40: RNP/NRDC commented a utility should be required to meet with an applicant under all circumstances rather than just prior to submission of an interconnection application.

RESPONSE: The department is not persuaded the EDC should be required to meet under all circumstances.

COMMENT NO. 41: RNP/NRDC and IREC commented New Rule VIII(5) should be revised to allow minor changes by the applicant without the need for written consent from the EDC.

RESPONSE: The department is not persuaded New Rule VIII(5) should be amended. Furthermore, the department believes that allowing minor changes would lead to disputes as whether a change was minor.

COMMENT NO. 42: RNP/NRDC commented clarification of New Rule VIII(9) is necessary to specify what standards or criteria are used for the witness test conducted by the EDC.

RESPONSE: The department agrees with RNP/NRDC and has amended New Rule VIII(9) to define the witness test criteria and documentation of unacceptable witness test results.

COMMENT NO. 43: RNP/NRDC commented New Rule VIII(11) should include a provision to require EDCs to document and report to the interconnection customer which requirements of IEEE 1547-2003 the small generator facility is not complying.

RESPONSE: The department agrees with RNP/NRDC and has amended New Rule VIII(11).

COMMENT NO. 44: NWE requests they be given greater flexibility to address unforeseen operational problems.

RESPONSE: The request for flexibility is contrary to the intent of the rules.

COMMENT NO. 45: NWE commented a statement be included that the 90% short circuit rating be revised to allow de-rating for the X/R effect.

RESPONSE: The department has amended the rules to allow de-rating of the EDCs short circuit interrupting capability due to X/R effects.

COMMENT NO. 46: IREC commented Level 1 applicants should be assigned a queue position.

RESPONSE: The department has amended New Rule XI(3)(b) to address queue positions for Level 1 applicants.

COMMENT NO. 47: IREC commented the timeframes allowed by the rules should match the timeframes allowed in IREC's Model Rules.

RESPONSE: The department is not persuaded the timeframes should be revised.

COMMENT NO. 48: IREC commented New Rule IX should include a timeframe for when the EDC must provide an executable interconnection agreement once the EDC has determined the small generator facility passes Level 1.

RESPONSE: The department agrees and has amended New Rule IX to include a timeframe.

COMMENT NO. 49: IREC commented the New Rules should reference "line section" rather than circuit and "line section" should be defined.

RESPONSE: The department agrees and has amended the rules.

COMMENT NO. 50: IREC suggested a definition for "Minor System Modification" be included in the rules.

RESPONSE: The department is not persuaded a definition is necessary.

COMMENT NO. 51: NWE commented Level 3 reviews are for small generators that do not export power beyond the point of interconnection and noted interconnectors should be made aware that any Level 4 interconnection would require a full interconnection study.

RESPONSE: The department agrees with NWE that Level 3 reviews are for small generators that do not export power beyond the point of interconnection. However, the department does not agree with NWE's contention that all Level 4 interconnections require a full interconnection study. The New Rule XII(4)(a) allows the EDC and applicant to waive meetings and studies by mutual agreement as studies should be conducted only if necessary.

COMMENT NO. 52: MSIRG commented the mechanism for establishing the share of costs for network upgrades among multiple queued projects, and for reimbursement of such costs, is not laid out well in the proposed rules. Further, MSIRG comments to the extent cost allocation is discussed, it violates the fundamental principles of fairness, established federal interconnection rules, and Montana's existing interconnection rules pertaining to QFs.

RESPONSE: The department does not agree with MSIRG and is not persuaded the rules should be revised.

COMMENT NO. 53: IREC commented a limit on the cost of the actual distribution upgrades be included in the proposed Rule XII and the cost of distribution system upgrades not be permitted to exceed 125%, in any future installation, the estimated cost determined in the facilities study.

RESPONSE: The department is not persuaded a limit should be imposed.

COMMENT NO. 54: NWE commented the department should consider the mechanism FERC has used with regard to alternative dispute resolution and incorporate a similar model at the state level.

RESPONSE: The department is not persuaded FERC's dispute resolution model is more appropriate.

COMMENT NO. 55: RNP/NRDC requests New Rule XIII(4) be clarified to ensure if an applicant invokes the dispute resolution process, it shall suffer no prejudice with respect to the processing of the interconnection request and shall not lose its place in the queue while the dispute is being resolved.

RESPONSE: The department is not persuaded clarification is necessary.

DEPARTMENT OF PUBLIC SERVICE REGULATION

/s/ Robin McHugh
Robin McHugh
Rule Reviewer

/s/ Greg Jergeson
Greg Jergeson
Chairman
Public Service Commission

Certified to the Secretary of State August 2, 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 March 31, 2010. This table includes those rules adopted during the period April 1, 2010, through June 30, 2010, and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2010, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2010 Montana Administrative Register.

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

GENERAL PROVISIONS, Title 1

I Examination Procedures, p. 1585

ADMINISTRATION, Department of, Title 2

2.21.215 and other rules - Annual Leave Policy, p. 804, 1356, 1603
2.21.305 and other rules - Disaster and Emergency Leave Policy, p. 808, 1358, 1605
2.21.501 and other rules - Jury Duty - Witness Leave Policy, p. 1362
2.21.617 and other rules - Holidays - Holiday Pay, p. 1, 646
2.21.1701 and other rules - Overtime - Nonexempt Compensatory Time, p. 1365
2.21.1801 and other rules - Exempt Compensatory Time Policy, p. 811, 1360, 1606
2.21.3702 and other rules - Recruitment - Selection, p. 1368, 1633
2.21.3801 and other rules - Probation, p. 1382
2.21.5005 and other rules - Reduction in Work Force, p. 253, 908
2.21.6606 and other rules - Employee Records Management, p. 256, 1070
2.21.6702 and other rules - Incentive Award Program, p. 590, 1072
2.59.1701 and other rules - Licensing and Regulation of Mortgage Brokers - Mortgage Lenders - Mortgage Loan Originators - License Renewals for Mortgage Lenders as of July 1, 2009 - New Applicants for a Mortgage Loan Originator License – Temporary Licenses - New Applicants for a Mortgage Broker or Mortgage Lender License – Temporary Licenses - Net Worth Requirement for Mortgage Brokers -

Unacceptable Assets - Proof of Net Worth - Records to be Maintained by Mortgage Lenders - Financial Responsibility, p. 1292, 307

2.59.1701 and other rules - Definitions - Mortgage Loan Originator Licensing - Continuing Education Provider Requirements, p. 945, 1480

(Public Employees' Retirement Board)

2.43.1306 Actuarial Rates - Assumptions, p. 1433

2.43.3501 and other rule - Adoption by Reference of the State of Montana Public Employees Pooled Trust - Adoption by Reference of the State of Montana Public Employee Defined Contribution Plan Document - State of Montana Public Employee Deferred Compensation (457) Plan Document, p. 941, 1229, 1725

2.43.3502 and other rule - Investment Policy Statement for the Defined Contribution Retirement Plan - Investment Policy Statement for the 457 Deferred Compensation Plan, p. 937, 1227, 1724

(State Compensation Insurance Fund)

2.55.320 and other rule - Classifications of Employments - Retrospective Rating Plans, p. 2179, 306

AGRICULTURE, Department of, Title 4

I Eurasian Watermilfoil Management Area, p. 1129, 1493

4.5.210 Priority 3 Regulated Plants, p. 1588

4.10.201 and other rules - Pesticide Administration, p. 457, 909

4.12.601 and other rules - Fertilizer Regulations, p. 1436

STATE AUDITOR, Title 6

6.6.1906 and other rules - Administration of a New Risk Pool by Comprehensive Health Care Association and Plan, p. 1132, 1494

6.6.3501 and other rules - Annual Audited Reports - Establishing Accounting Practices and Procedures to Be Used in Annual Statements, p. 2394, 315

COMMERCE, Department of, Title 8

I Submission and Review of Applications for Funding Under the Treasure State Endowment Program, p. 4, 1073

I Administration of the 2010-2011 Federal Community Development Block Grant (CDBG) Program, p. 2416, 1285

8.99.301 and other rules - Certified Regional Development Corporations Program, p. 1231

8.99.901 and other rules - Award of Grants - Loans Under the Big Sky Economic Development Program, p. 192, 738

(Board of Housing)
8.111.602 Low Income Housing Tax Credit Program, p. 814, 1499

EDUCATION, Department of, Title 10

10.7.106A and other rules, School Finance, p. 1635
10.16.3022 and other rules - Special Education, p. 473, 1076

(Montana State Library)
10.102.1150A and other rules - Library Standards, p. 958, 1500
10.102.4001 and other rules - Resource Sharing - Allocation of Federation Funding, p. 6, 1074

FISH, WILDLIFE AND PARKS, Department of, Title 12

(Fish, Wildlife and Parks Commission)
12.6.2201 and other rules, Exotic Species, p. 1643
12.6.2205 Noncontrolled Species, p. 2419, 741
12.11.115 and other rules - Recreational Water Use on Lake Five, p. 671, 1287
12.11.202 and other rules - Recreational Water Use of the Beaverhead and Big Hole Rivers, p. 968, 1726
12.11.501 and other rules - No Wake Zones on Echo Lake and Swan Lake, p. 197, 744
12.11.3215 Recreational Water Use on Holter Lake, p. 2240, 739

ENVIRONMENTAL QUALITY, Department of, Title 17

17.40.206 Examinations, p. 266, 745
17.50.403 and other rules - Solid Waste - Licensing and Operation of Solid Waste Landfill Facilities, p. 164, 1326, 317, 647
17.55.102 and other rules - Definitions - Facility Listing - Facility Ranking - Delisting a Facility on the CECRA Priority List - Incorporation by Reference - Proper and Expeditious Notice - Third-Party Remedial Actions at Order Sites - Additional Remedial Actions Not Precluded - Orphan Share Reimbursement - Purpose, p. 1730, 2077, 816
17.56.101 and other rules - Underground Storage Tanks, p. 1450
17.56.506 and other rules - Reporting of Confirmed Releases - Adoption by Reference - Release Categorization, p. 12, 1502

(Board of Environmental Review)
17.8.745 Montana Air Quality Permits-Exclusion for De Minimis Changes, p. 268, 1292
17.24.1109 Bonding Letters of Credit, p. 2426, 911
17.30.502 and other rules - Department Circular DEQ-7, p. 818, 1385
17.30.617 and other rule - Water Quality - Outstanding Resource Water Designation for the Gallatin River, p. 2294, 328, 1398, 438, 1953, 162, 1324, 264, 1648

17.38.106 Fees, p. 2421, 910
17.38.201A and other rules - Incorporation by Reference - Maximum Inorganic Chemical Contaminant Levels - Maximum Radiological Contaminant - Chemical and Radiological Quality Samples - Testing - Sampling Records - Reporting Requirements - Public Notification for Community and Noncommunity Supplies, p. 828
17.50.403 and other rule - Definitions - Annual Operating License Requirements, p. 833

TRANSPORTATION, Department of, Title 18

I-V Administration of an Emergency Medical Service Grant, p. 18, 649
18.2.101 and other rules - Incorporation of Model Rules - Contested Case Procedures, p. 1387, 1731
18.8.202 and other rules - Transportation of Hazardous Materials - Definitions - Motor Carriers Operating Interstate - Maximum Allowable Weights - Maximum Allowable Weights on the Noninterstate - Federal Motor Carrier Safety Rules - Safety Inspection Program, p. 674, 1179
18.9.103 Distributor's Statements, p. 22, 650
18.12.401 and other rules, Aeronautics Division, p. 1650

JUSTICE, Department of, Title 23

23.3.148 Release of Driving Records, p. 1237
23.12.204 Juvenile Records, p. 972, 1401
23.12.602 and other rules - Uniform Fire Code - Fire Safety - Fireworks, p. 1535, 1608, 395

(Gambling Control Division)
23.16.116 and other rule - Transfer of Interest Among Licensees - Loan Evaluation, p. 1393, 1732

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

I Carbon Monoxide Detector Standard, p. 978
I-VI Incumbent Worker Training Grants Program, p. 479, 913
I-XIII Approved Construction Techniques for Fire Mitigation, p. 980
24.11.203 and other rules - Independent Contractor Exemption Certificates - Employment Status Determinations by the Department, p. 1139, 1608
24.16.201 and other rules - Employment of Persons in an Executive, Administrative, or Professional Capacity, p. 594, 1180
24.16.7506 and other rules - Collective Bargaining Proceedings Heard by the Board of Labor Appeals, p. 1652

24.17.127 Prevailing Wage Rates for Public Works Projects - Building Construction Services - Heavy Construction Services - Highway Construction Services - Nonconstruction Services, p. 1840, 399, 912
24.301.131 and other rules - Incorporation by Reference of International Building Code - Building Code Modifications - Incorporation by Reference of International Existing Building Code - Incorporation by Reference of International Mechanical Code - Incorporation by Reference of International Fuel Gas Code - Plumbing Requirements - Electrical Requirements - Inspection Fees - Refunds - Credits - Definitions, p. 1244, 1733
24.301.161 Model Energy Code, p. 1844, 750

(Board of Architects and Landscape Architects)
24.101.413 and other rule - Renewal Dates - Requirements - Fee Schedule, p. 200, 1078
24.114.403 and other rule - Business Entity Practice - Branch Offices, p. 600, 1080

(Board of Barbers and Cosmetologists)
24.121.301 and other rules - Definitions - Out-of-State Applicants - Inspections - School Requirements - School Standards - Curricula - Implements and Equipment - Sanitizing Equipment - Salon Preparation - Unprofessional Conduct, p. 271, 1402
24.121.301 and other rules - Definitions - Implements - Equipment - Continuing Education - Unprofessional Conduct, p. 837
24.121.401 Fees, p. 2337, 915

(Board of Dentistry)
24.138.402 and other rules - Fee Schedule - Dental Auxiliaries - Requirements and Restrictions - Continuing Education - Restricted Volunteer Licensure, p. 1743, 411
24.138.508 and other rules - Dental Anesthetic Certification - Dental Permits - Exemptions - Continuing Education, p. 1068, 2091, 406

(State Electrical Board)
24.141.301 and other rules - Definitions - Fee Schedule - Continuing Education, p. 203, 1081

(Board of Hearing Aid Dispensers)
24.150.301 and other rules - Definitions - Fees - Record Retention - Licensure - Renewals - Continuing Education - Unprofessional Conduct - Minimum Testing - Transactional Document Requirements - Notification - Licensees From Other States - Exceptions, p. 284, 1085

(Board of Massage Therapy)
I & II Definitions - Licensure Requirements, p. 602, 1185
24.101.413 and other rules - Renewal Dates - Massage Therapy, p. 207, 746

24.155.301 and other rules - Definitions - Continuing Education - Unprofessional Conduct, p. 1239

(Board of Medical Examiners)
I Qualification Criteria for Evaluation and Treatment Providers, p. 1467
24.101.413 and other rules - Renewal Dates - Medical Examiners-Licensure - Telemedicine - Podiatry - Nutrition Practice - Acupuncture - Physician Assistant-Scope of Practice - Reciprocity - Board Report Obligations, p. 2340, 1187
24.156.616 and other rules - Registry - Licenses - Testing Requirements - Registration, p. 1610, 73, 1506

(Board of Optometry)
24.168.401 and other rules - Fee Schedule - Licensure Requirements - Continuing Education - Licensure By Endorsement, p. 298, 1405

(Board of Outfitters)
24.101.403 and other rules - Renewal Dates and Requirements - Fees, p. 1590
24.171.401 and other rules - Safety Provisions -Unprofessional Conduct - Misconduct - Provisional Guide License - Emergency Guide License, p. 1472
24.171.602 and other rules - Guide or Professional Guide License - Emergency Guide License - Unprofessional Conduct - Guide to Hunter Ratio, p. 1616, 651

(Board of Plumbers)
24.180.401 and other rule - Fee Schedule - Continuing Education Provider Qualifications, p. 974, 1609

(Board of Private Security)
24.182.301 and other rules - Definitions - Fee Schedule - Firearms - Requalification - Application - Experience Requirements - Written Examination - Temporary Permit - Trainee - Firearms Licensure - Unprofessional Conduct, p. 606, 1194

(Board of Professional Engineers and Professional Land Surveyors)
24.183.408 and other rules - Authorization - Applications - Examination Procedures - Continuing Education - Screening Panel, p. 1554, 530

(Board of Psychologists)
24.189.301 and other rules - Definitions - Supervisory Experience - Continuing Education, p. 302, 1508

(Board of Realty Regulation)
24.101.413 and other rules - Renewal Dates - Brokers and Salespersons - Property Management - Timeshare Licensure and Registration, p. 1748, 532